

Yellow



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

JAN 30 1990

REPLY TO THE ATTENTION OF:

J.L. Polinsky & Associates  
528 Citizens Building  
Cleveland, Ohio 44114

RE: Depositions of Joseph J. Fredle and Catherine McCord in U.S. v. Amstead Industries, no. C.87-1284A

Dear Ms. Polinsky:

Attached is the annotated and signed version of the deposition transcript of Mr. Joseph Fredle. The corrections have been noted in pen and initialed by Mr. Fredle. Due to the volume of Ms. McCord's deposition transcript I anticipate that it will take an additional week for us to provide you with her review and signature. If this presents you with any problems please call me at (312) 886-0559.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard J. Clarizio".

Richard J. Clarizio 1/30/90  
Assistant Regional Counsel

Attachment

cc: K. Weissmuller (w/out attachment)  
K. Sutula (w/out attachment)  
K. McCord (w/out attachment)

COPY

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

United States of America, )

Plaintiff; )

vs. )

*Richard J. Lambros*  
Amsted Industries, Inc., )  
DBA American Steel )  
Foundries, )

Defendant. )

No. C87-1284A

Judge Lambros

- - - -

Deposition of JOSEPH J. FREDLE, a Witness herein,  
taken by the Defendant upon adverse party examination  
before Joyce L. Polinsky, a Notary Public within and  
for the State of Ohio, at the offices of the United  
States Department of Justice, 1404 East Ninth Street,  
Cleveland, Ohio, commencing at 10:20 A.M., Wednesday,  
November 1, 1989, pursuant to notice and stipulations  
of counsel.

- - - -

**J. L. POLINSKY & ASSOCIATES**

SHORTHAND AND STENOGRAPHIC REPORTERS

528 CITIZENS BUILDING • CLEVELAND, OHIO 44114

896-7983

FREDLE DEPOSITION EXHIBIT INDEX

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1 APPEARANCES:

2 U.S. Department of Justice, by  
3 Ms. Kathleen Ann Sutula,

4 On behalf of the Plaintiff;

5 Squire, Sanders & Dempsey, by  
6 Mr. Philip C. Schillawski,

7 On behalf of the Defendant.

8 - - - -

9 JOSEPH J. FREDLE, of lawful age, a  
10 Witness herein, called by the Defendant for  
11 the purpose of adverse party examination, as  
12 provided by the Ohio Rules of Civil Procedure  
13 for the District Courts of the United States,  
14 being by me first duly sworn, as hereinafter  
15 certified, deposed and said as follows:

16 - - - -

17 EXAMINATION OF JOSEPH J. FREDLE

18 BY MR. SCHILLAWSKI:

19 Q. Mr. Fredle, my name is Philip Schillawski.  
20 I'm an attorney with Squire, Sanders and  
21 Dempsey. We represent Amsted Industries,  
22 Incorporated and American Steel Foundries, who  
23 are defendants in an action that the United  
24 States has filed.

25 I'm going to be asking you some questions  
regarding any involvement that you may have



1 had with American Steel Foundries in your  
2 occupation. I want my questions to be clear  
3 to you. If there is anything that I ask, that  
4 you don't understand, please let me know and  
5 I'll try to rephrase the question, make sure  
6 that you understand what I'm trying to get  
7 from you.

8 A. Okay, fine.

9 Q. Would you please state your full name for the  
10 record?

11 A. Joseph J. Fredle.

12 Q. And what is your business address?

13 A. 25089 Center Ridge Road, Westlake, Ohio.

14 Q. By whom are you employed?

15 A. The U.S. Environmental Protection Agency.

16 Q. The notice of deposition requested that you  
17 bring certain documents with you to this  
18 deposition. Do you have any documents with  
19 you?

20 A. No, I don't.

21 MS. SUTULA: He has never seen  
22 the notice, Phil. May I see the notice?

23 MR. SCHILLAWSKI: Sure.

24 MS. SUTULA: Can we take a  
25 break? I'm going to go back to my office, see

1 if I have any documents that fall under this.

2 MR. SCHILLAWSKI: Sure.

3 - - - -

4 (Thereupon, a recess was had.)

5 - - - -

6 MS. SUTULA: Put on the record  
7 that during the break I went back to my office  
8 and reviewed certain documents that Mr. Fredle  
9 brought with him, which I did not know and he  
10 did not know were pursuant to the notice. I  
11 looked through them for privileged materials  
12 and there were none, and I'm handing you the  
13 documents from the files that Mr. Fredle  
14 brought with him.

15 Off the record.

16 - - - -

17 (Thereupon, a discussion was had off the  
18 record.)

19 - - - -

20 Q. Mr. Fredle, do you keep a diary of your  
21 activities for U.S. EPA?

22 A. Not any particular diary, no.

23 Q. Do you keep a personal diary at all?

24 A. No.

25 Q. Do you keep a journal or any notes regarding

1 your activities?

2 A. Not a journal. I do make notes on my --

3 Q. Would those notes be included in the files of  
4 materials which you provided here?

5 A. Yes.

6 Q. In preparing for this deposition, did you  
7 refer to any documents to refresh your  
8 recollection?

9 A. Yes, I did.

10 Q. And are all of those documents produced in  
11 your file materials that you produced here?

12 A. Yes.

13 Q. To prepare for your deposition, who did you  
14 speak with?

15 A. I spoke with Mrs. Sutula, I spoke with Rich  
16 Clarizio and Kurt Waltheimer.

17 MS. SUTULA: Weissmuller.

18 THE WITNESS: Sorry.

19 Q. Did you speak with anyone else?

20 A. Catherine McCord.

21 Q. Was an attorney present during the time when  
22 you spoke with Catherine McCord?

23 A. Yes.

24 Q. Was an attorney present at all times when you  
25 spoke with Catherine McCord?

1 A. This is in relation --

2 MS. SUTULA: Yes or no. In  
3 relation to this case, to the deposition.

4 A. In relation to the deposition?

5 Q. Yes.

6 A. No.

7 Q. Can you describe what you spoke with Catherine  
8 McCord about during the times that an attorney  
9 was not present?

10 MS. SUTULA: Objection.

11 You may answer.

12 THE WITNESS: I may answer?

13 MS. SUTULA: Yes.

14 A. Basically setting up a meeting time to get  
15 together with the attorneys.

16 Q. Did you discuss anything of substance  
17 regarding this case with Catherine McCord,  
18 when an attorney was not present?

19 A. Not that I can recall.

20 Q. Where did you go to high school?

21 A. Wickliffe High School.

22 Q. And what did you study when you were there?  
23 Was it college preparatory, vocational  
24 education, essentially what fields?

25 A. College prep.

1 Q. And did you go to college?  
2 A. Yes.  
3 Q. Junior college at all?  
4 A. No.  
5 Q. Where did you go to?  
6 A. Valparaiso University.  
7 Q. What were your major and minor fields in  
8 college?  
9 A. Civil engineering, no minor.  
10 Q. Did you attend any other college besides  
11 Valparaiso?  
12 A. No.  
13 Q. Have you had any post graduate college  
14 education?  
15 A. No.  
16 Q. Have you had any technical training after  
17 graduation from college?  
18 A. I have had numerous training courses in  
19 relation to my employment.  
20 Q. Can you please tell me what those courses were  
21 and what the topics were that were covered in  
22 those courses?  
23 A. No, not right offhand. It's -- I can't recall  
24 all the courses that I have taken.  
25 Q. Well, maybe we can pick them up as we go along

1           here. In college, did you have any formal  
2           courses in chemistry?

3   A.    Yes.

4   Q.    To what extent were those courses?

5   A.    As I recall, I had one year of chemistry that  
6           included organic and inorganic chemistry.

7   Q.    Was that all the chemical courses you took?

8   A.    As I recall, yes.

9   Q.    Did you have any courses in statistics in  
10          college?

11   A.    No.

12   Q.    Did you have any courses in environmental law  
13          or regulations in college?

14   A.    No.

15   Q.    After you left college, did you have any other  
16          classroom training in chemistry?

17   A.    Nothing specific in chemistry, no.

18   Q.    Was there any on the job or other type of  
19          training in chemistry after college?

20   A.    I'm not sure what you mean by on-the-job  
21          training.

22   Q.    In the process of any employment, were you  
23          involved with chemical related issues?

24   A.    Yes. I have been involved with chemical  
25          related issues on the job in numerous

1 occasions.

2 Q. As part of your working on the job with  
3 chemicals, have you had occasion to do any  
4 research into chemistry or the background of  
5 various chemicals?

6 A. Somewhat, yes.

7 Q. Has that research included inorganic chemistry  
8 as it would apply to heavy metals?

9 A. Not that I can recall.

10 Q. Have you had any formal training in statistics  
11 after college?

12 A. No.

13 Q. Any on-the-job or other training in statistics  
14 after college?

15 A. No.

16 Q. Any formal training in environmental  
17 regulations or law after college?

18 MS. SUTULA: By "formal," you  
19 mean formal training at a university?

20 A. Well, I have been through numerous courses  
21 that involve -- or, seminars that involve  
22 getting into what the regulations are and so I  
23 would have to say yes.

24 Q. Which regulations were your seminars involved  
25 with?

1 A. Regulations involving the Clean Water Act, the  
2 Clean Air Act, the Resource Conservation and  
3 Recovery Act, and the Superfund Act.

4 Q. Approximately how many seminars have you  
5 attended that dealt with the Resource  
6 Conservation and Recovery Act?

7 A. I can't recall offhand.

8 MS. SUTULA: Off the record.

9 - - - -

10 (Thereupon, a discussion was had off the  
11 record.)

12 - - - -

13 Q. What was your first employment after leaving  
14 college?

15 A. I worked for the City of Cleveland.

16 Q. In what capacity?

17 A. As a staff engineer.

18 Q. And when did you start that employment?

19 A. In the summer of 1971.

20 Q. And how long were you employed in that  
21 position?

22 A. Approximately a year.

23 Q. Did you have promotions to another position or  
24 did you go to another employer?

25 A. No, I went to another employer.



1 Q. While you were working for the City of  
2 Cleveland, what were your job duties?

3 A. My duties were to inspect the construction of  
4 sewage treatment plants.

5 Q. Was this inspection related to the mechanical  
6 construction of the plants, the chemical  
7 processes that went on there or some other  
8 type?

9 A. It was more related to the actual construction  
10 versus the process that was involved, the  
11 treatment processes that were involved.

12 Q. After you left the City of Cleveland, who were  
13 you employed by?

14 A. The U.S. Public Health Service.

15 Q. And that employment started in?

16 A. In the spring of '72.

17 Q. What was your position with the Public Health  
18 Service?

19 A. Field engineer.

20 Q. And what were your duties in that position?

21 A. I was involved with the design, construction  
22 and -- basically the design and construction  
23 of water and sewer systems in some of the  
24 Indian villages --

25 Q. I'm sorry, I didn't hear you.

1 A. In some of the Indian villages that were  
2 served by the Public Health Service.

3 Q. Did those duties include actual design of the  
4 process?

5 A. There was some involvement with that, yes.

6 Q. Did you handle any of the chemical aspects of  
7 the processing?

8 A. I don't believe there were very many chemical  
9 aspects. It was mainly biological treatment,  
10 when we did do treatment.

11 Q. How long were you employed by the Public  
12 Health Service?

13 A. Three years.

14 Q. And were you in the same position for those  
15 three years?

16 A. Yes.

17 Q. Did your job duties in that position change at  
18 all during the three years?

19 A. No.

20 Q. Where did you -- where were you employed after  
21 you left the Public Health Service?

22 A. I was then employed by the U.S. Environmental  
23 Protection Agency.

24 Q. When did that employment start?

25 A. In June of '74, 1974.

1 Q. And in what position were you employed by the  
2 U.S. EPA when you started?

3 A. I was a staff engineer at that time.

4 Q. And what were your duties in that position?

5 A. My duties were involved with the drinking  
6 water program, and we inspected water  
7 treatment plants and also provided technical  
8 assistance to water treatment systems  
9 throughout the country that were having  
10 problems.

11 Q. Did your technical -- did the technical  
12 aspects of your job involve drinking water  
13 standards or --

14 A. Yes.

15 Q. -- some other type?

16 A. Standards and treatment.

17 Q. And were you involved with the inorganic  
18 drinking standards for, say, heavy metals?

19 A. Yes.

20 Q. Were you given any specific training regarding  
21 those standards?

22 A. As I remember, I had training. Whether they  
23 were specifically related to those standards  
24 or which standards, I don't recall.

25 Q. How long were you involved with the drinking

1 water aspect?

2 A. About three years.

3 Q. And were you in the same position for those  
4 three years?

5 A. Yes.

6 Q. After those three years ended, approximately  
7 what date are we?

8 A. We're at -- in the spring of 1977.

9 Q. Did you move to a new position at that time?

10 A. Yes.

11 Q. What was that new position?

12 A. I was an on-scene coordinator.

13 Q. Could you describe what an on-scene  
14 coordinator is?

15 A. An on-scene coordinator would respond to  
16 emergency situations that involve spills of  
17 chemicals or petroleum products and try to  
18 make sure that everything was being done to  
19 have them properly cleaned up.

20 Q. And did your duties at that time involve  
21 taking any samples?

22 A. Yes.

23 Q. Did they involve chemistry of any kind?

24 A. I did not perform any chemistry, no.

25 Q. Were you given any training at this time in

1 sampling techniques?

2 A. I'm sure that during some of the training that  
3 I had, we touched on sampling.

4 Q. Was there -- was that training in depth?

5 A. I don't really recall the depth of the  
6 training.

7 Q. Do you recall whether any manuals or  
8 instruction booklets or publications were used  
9 regarding sampling in that training?

10 A. No, I don't recall.

11 Q. How long were you involved as an on-scene  
12 coordinator?

13 A. About seven years.

14 Q. And were you involved with the taking of  
15 sampling -- taking of samples during that  
16 entire period?

17 A. Yes.

18 Q. After you were an on-scene coordinator, what  
19 were you?

20 A. A staff engineer.

21 Q. At what time did you take up those duties?

22 A. That would have been in 1984.

23 Q. What were your duties in that position?

24 A. In that position, I became more of an  
25 inspector.

1 Q. Can you describe what your duties were as an  
2 inspector?

3 A. We would go to different facilities as  
4 requested and perform inspections relating to  
5 the regulations, and whether these facilities  
6 were meeting those regulations, different  
7 environmental regulations.

8 Q. Were the environmental regulations in a  
9 specific area; in other words, the Clean Water  
10 Act, RCRA?

11 A. They were basically in most areas that EPA  
12 gets involved with.

13 Q. Was the Resource Conservation and Recovery  
14 Act, RCRA, one of those areas?

15 A. Yes.

16 Q. And during this time that you were an  
17 inspector, did you do sampling?

18 A. Yes.

19 Q. Were you given any other instruction or  
20 training in sampling techniques during this  
21 time?

22 A. I don't recall.

23 Q. How long were you an inspector?

24 A. Four years.

25 Q. And are you still an inspector?

1 A. No.

2 Q. What are your present duties?

3 A. I'm an on-scene coordinator.

4 Q. Is this essentially the same duties that you  
5 were -- that you had before you were an  
6 inspector?

7 A. Yes.

8 Q. And were there any other duties intervening  
9 between being an inspector and your present  
10 duties?

11 A. No.

12 Q. Do you recall any individuals who gave you any  
13 training in sampling techniques or chemistry?

14 A. No.

15 Q. Who were you supervised by during your period  
16 as an inspector?

17 A. I had a number of supervisors. One was Martin  
18 Trembly.

19 Q. Do you know how to spell his name?

20 A. T-r-e-m-b-l-y.

21 Q. Was there anyone else?

22 A. Rich Winklhofer.

23 Q. Can you spell that?

24 A. W-i-n-k-l-h-o-f-e-r.

25 Q. Was there anyone else that you can recall?

1 A. Not that I can recall.

2 Q. Your period as an inspector ran between the  
3 years when?

4 A. 1984 and 1988.

5 Q. Did you ever supervise anyone in your tenure  
6 as an inspector?

7 A. Yes.

8 Q. Who did you supervise?

9 A. There was a point when Mr. Trembly had left  
10 and there were basically different people in  
11 our sections taking turns as supervisor of a  
12 section.

13 Q. And how many people would there have been in  
14 the section?

15 A. Approximately six or seven.

16 Q. During the time periods that you went on  
17 inspections, did you supervise anyone?

18 A. Yes.

19 Q. Can you describe what those supervisory duties  
20 entailed?

21 A. They entailed supervising the sampling team  
22 and inspection team that was involved in the  
23 different inspections and projects that I was  
24 involved with.

25 Q. Did you hold the position or the job duties of



1 an inspector during August of 1986?

2 A. Yes.

3 Q. And during that time, were you present at a  
4 sampling inspection of the American Steel  
5 Foundries' facility in Alliance, Ohio and  
6 Sebring Township, Ohio, that would have been  
7 August 6th and 7, 1987?

8 A. Yes.

9 Q. I'm sorry, 1986.

10 A. Right.

11 Q. Who else from U.S. EPA was present at that  
12 sampling inspection?

13 A. Besides myself, there was Scott Thomas and  
14 Mike Patton and Catherine McCord from the U.S.  
15 EPA.

16 Q. Was -- were those people present at the  
17 sampling inspection on August 6th?

18 A. Yes.

19 Q. Were they all present at the sampling  
20 inspection on August 7th?

21 A. No.

22 Q. Who was present at the inspection on August  
23 7th?

24 A. All of the previously named people, except for  
25 Scott Thomas.

1 Q. At that August 6th and 7, 1986 sampling  
2 inspection, who was in charge of the sampling  
3 procedures?

4 A. I was.

5 Q. Who made the decisions regarding what  
6 materials were to be sampled?

7 A. That was a joint effort. The actual decisions  
8 on what was to be sampled was up to Catherine  
9 McCord.

10 Q. Who made the decisions regarding the methods  
11 that would be used in taking the samples?

12 A. I would say it was a joint decision between  
13 Catherine and myself.

14 Q. Did Mr. Thomas have any part in the  
15 decision-making about which samples were to be  
16 taken or how they were to be taken?

17 A. No.

18 Q. Did Mr. Patton have any part in that  
19 decision-making?

20 A. No.

21 MR. SCHILLAWSKI: Can you mark  
22 this as Defendant's Exhibit 1?

23 - - - -

24 (Thereupon, five pages of handwritten  
25 inspection notes entitled 'Am. Steel Foundries

1           Sampling,' were marked for the purpose of  
2           identification as Defendant's Exhibit 1.)

3

4       Q.     Mr. Fredle, I'm handing you a document that's  
5           been marked as Defendant's Exhibit Number 1,  
6           and I should note for the record that this  
7           document had been produced at Mr. Patton's  
8           deposition previously and also bears a marking  
9           from that production.

10                 Do you recognize this document?

11     A.     Yes.

12     Q.     Can you describe what it is?

13     A.     These are notes that I took during that  
14           inspection.

15     Q.     Do these notes cover the entire period of the  
16           August '86 sampling inspection?

17     A.     They seem to cover mainly the 6th -- no,  
18           here's the 7th, also. Yes, they do cover that  
19           period.

20     Q.     I believe that the files which you brought  
21           with you today contain the original of these  
22           notes. If you could take the originals out of  
23           the files and please compare them with the  
24           copy and then I would like you to answer  
25           whether or not the copy which has been marked

1 as Defendant's Exhibit Number 1 is a true and  
2 correct copy of the original.

3 MS. SUTULA: Do you have problems  
4 with the authenticity of this?

5 MR. SCHILLAWSKI: No.

6 MS. SUTULA: Do you expect me to  
7 have problems with authenticity?

8 MR. SCHILLAWSKI: You might.

9 MS. SUTULA: I don't think there  
10 are. I'm wondering why you're going through  
11 this.

12 MR. SCHILLAWSKI: If you want to  
13 stipulate to the correctness of the copy,  
14 that's fine.

15 MS. SUTULA: If these are what we  
16 produced, I would. But then again, I would  
17 have him count the pages to make sure.

18 A. I have already counted the pages. There is  
19 the same number of pages. I'm just looking at  
20 my writing here to make sure that it's the  
21 same, it still says the same thing.

22 As best as I can tell, these are exactly  
23 the same as the original notes.

24 Q. What is the physical condition of the original  
25 notes? In other words, what were the notes

1           made on?

2   A.     White paper.

3   Q.     Are they bound at all?

4   A.     No.

5   Q.     Were these notes made by you in the ordinary  
6           course of your business as a U.S. EPA  
7           inspector?

8   A.     Yes.

9   Q.     Is there a U.S. EPA standard operating  
10          procedure which defines whether or not notes  
11          are to be taken at a sampling inspection?

12   A.     No.

13   Q.     Do you know of any other requirements that  
14          U.S. EPA has for the taking of notes during a  
15          sampling inspection?

16   A.     No.

17   Q.     Do you know of any requirements for, any U.S.  
18          EPA requirements, for what should be included  
19          in any notes that are taken during a sampling  
20          inspection?

21   A.     No.

22   Q.     If we can take a look at your notes, and if  
23          you could use them to refresh your  
24          recollection if you need them, is -- let me  
25          first ask, when did you arrive at American

1 Steel Foundries on August 6th?

2 A. I don't have a time noted in my notes as to  
3 when we arrived.

4 Q. Do you recall approximately what time you  
5 arrived?

6 A. Approximately nine -- between nine and ten  
7 o'clock.

8 Q. And where did you go first when you went to  
9 American Steel Foundries?

10 A. We went to the landfill site.

11 Q. Was there any American Steel Foundry personnel  
12 at the landfill site when you arrived there?

13 A. No.

14 Q. Had you made advanced arrangements to go to  
15 the landfill site?

16 A. Yes.

17 Q. Were the advanced arrangements made with  
18 American Steel Foundries?

19 A. No.

20 Q. Do you know whether or not American Steel  
21 Foundries was notified that the sampling  
22 inspection was going to take place?

23 A. As far as I'm aware, they were not notified.

24 Q. How long were you at the landfill site before  
25 anyone from American Steel Foundries arrived?

1 A. As I remember, I would say approximately a  
2 half hour.

3 Q. What did you do during that time?

4 A. Waited.

5 Q. Did you personally just wait?

6 A. Yes.

7 Q. Did you walk around the site at all, look at  
8 things?

9 A. I believe we may have walked around the site  
10 some.

11 Q. Did you take any pictures?

12 A. I did not take any pictures.

13 Q. Did you take any samples?

14 A. No.

15 Q. Did anyone take any pictures?

16 A. I can't recall.

17 Q. Did anyone else take any samples?

18 A. No.

19 Q. What happened when American Steel Foundries  
20 personnel arrived?

21 A. We watched a truck dump a load of waste and  
22 leave.

23 Q. Did you contact the truck driver at all?

24 A. No.

25 Q. Did the truck driver see you?

- 1 A. I don't know.
- 2 Q. Did you take any action when you saw the truck  
3 arrive?
- 4 A. Not that I remember.
- 5 Q. Did anyone else take any action when the truck  
6 arrived?
- 7 A. Not that I remember.
- 8 Q. Did anyone else contact the truck driver?
- 9 A. I don't believe so.
- 10 Q. When did you first make contact with American  
11 Steel Foundry personnel?
- 12 A. As I remember, it was the second load of  
13 material that came in and was dumped, and that  
14 truck driver noticed us and came over and  
15 asked us what we were doing, and we explained,  
16 and that was the first point.
- 17 Q. Did you actively make contact with the truck  
18 driver or did the truck driver approach you?
- 19 A. The truck driver approached us.
- 20 Q. Did you or anyone else of the U.S. EPA  
21 personnel take any actions when the second  
22 truck arrived?
- 23 A. Not that I remember.
- 24 Q. What happened after the truck driver had  
25 conversed with you?



1 A. I believe he radioed to the facility and a  
2 couple of men came out from the facility.

3 Q. Do you recall who those people were?

4 A. Not offhand. I have their names. I know the  
5 names are in the report.

6 Q. Did you talk with these new people?

7 A. Yes.

8 Q. What was the substance of that conversation?

9 A. As I remember, we -- they asked us what our  
10 intentions were, and we told them why we were  
11 there and we then proceeded to -- proceeded  
12 with the inspection.

13 Q. How did you proceed with the inspection?

14 A. We tried to determine what the material was  
15 that was already dumped from information  
16 provided by the facility personnel.

17 Q. Did you determine what that material was?

18 A. Yes, I believe it was eventually determined.

19 Q. What was that material?

20 A. I don't recall right offhand.

21 Q. What happened after you determined what the  
22 material was?

23 A. We decided to sample those two loads, the  
24 material that was dumped from those two loads.

25 Q. How was that sampling conducted?

1 A. We went to each particular pile. The loads  
2 were dumped on the ground and they were still  
3 in a pile, and we randomly grabbed samples  
4 from that pile, put them in a mixing  
5 container, and then we mixed the -- we mixed  
6 up that composite sample and split the mix --  
7 split that mixed up material into two sample  
8 containers and gave one to the facility and  
9 kept one ourselves.

10 Q. Did the facility people request that you split  
11 samples with them?

12 A. I believe we asked them if they wanted a split  
13 and they said yes, they would take the split.

14 Q. How did you determine where the random grab  
15 samples were to be taken from in the pile of  
16 material?

17 A. Well, the material, as I remember, was very  
18 homogeneous, and it was basically a random  
19 sampling of just walking around the pile and  
20 every so often, grabbing a spoonful of the  
21 material.

22 Q. Did you use any random number tables or  
23 generators to determine where those random  
24 samples were to be taken?

25 A. No.

1 Q. What did you do after you had taken those  
2 samples?

3 A. We went back to the -- we went to the  
4 facility.

5 Q. This is the facility in Alliance, Ohio?

6 A. In Alliance, yes.

7 Q. What did you do there?

8 A. We tried to determine if the material that we  
9 really wanted to get a sample of was going to  
10 be generated that day.

11 Q. What was the material that you really wanted  
12 to get a sample of?

13 A. A mixture of some electric arc furnace dust  
14 and some slurry. I believe it was a  
15 sand/slurry mix.

16 Q. And did you determine whether or not it would  
17 be produced that day?

18 A. The facility told us that there wouldn't --  
19 would be no waste of that sort disposed of  
20 that day.

21 Q. Did you take any samples of that material that  
22 day?

23 A. That day what we did was we went around the  
24 facility in Alliance and collected samples  
25 from different points, and yes, we did get a

1 sample of the electric arc furnace dust in  
2 question and the slurry mix and a few other  
3 waste STREAMS *at the facility* strains at the facility.

4 Q. Were those samples taken, the samples of the  
5 electric arc furnace dust and the slurry mix,  
6 taken on the 6th?

7 A. As I remember they were.

8 Q. This is a fairly important point. If your  
9 notes could help you reflect your  
10 recollection, I would appreciate it if you  
11 would look.

12 A. May I refer to the report?

13 Q. Certainly. Why don't we just mark that now.

14 - - - -

15 (Thereupon, a one-page Memorandum to  
16 Catherine McCord from Joseph J. Fredle, dated  
17 February 9, 1987; attached five-page 'RCRA  
18 Sampling Inspection' report, was marked for  
19 the purpose of identification as Defendant's  
20 Exhibit 2.)

21 - - - -

22 Q. I have handed you a copy of what's marked as  
23 Defendant's Number 2. Can you identify this?

24 A. Yes, this is a copy of the report that was  
25 generated after the sampling inspection at the

1 American Steel Foundry facility in Alliance.

2 Q. Can you read the first line of the body of the  
3 first page of the report?

4 A. "Attached you will find an amended final  
5 report for the above mentioned sampling  
6 inspection, reflecting a re-analysis of  
7 samples --" it's hard to read here -- "D9,  
8 S11, S --" I'm sorry -- "S10, S11 and S14 by  
9 the CRL" period.

10 MR. SCHILLAWSKI: Can you now  
11 mark this as Defendant's Exhibit Number 3?

12 - - - -

13 (Thereupon, a one-page memorandum to  
14 William Muno from Joseph J. Fredle, dated  
15 December 2, 1986; attached five-page 'RCRA  
16 Sampling Inspection' report, was marked for  
17 the purpose of identification as Defendant's  
18 Exhibit 3.)

19 - - - -

20 Q. Can you identify what's been marked as  
21 Defendant's Number 3?

22 A. Yes.

23 Q. What is it?

24 A. It is a copy of the sampling inspection for  
25 American Steel Foundries, Alliance, Ohio.

- 1 Q. Is this the same document as was marked  
2 Defendant's Number 2?
- 3 A. Not exactly.
- 4 Q. What is the difference between the two  
5 documents?
- 6 A. The difference between the two documents is  
7 that there were a few changes made in the  
8 analytical results between the Defendant's --  
9 the Exhibit 3 and Exhibit 2 documents.
- 10 Q. What was the reason for the changes in those  
11 analytical results?
- 12 A. The reason was a re-analysis of the samples  
13 that --
- 14 Q. Why was that --
- 15 A. -- produced somewhat different results.
- 16 Q. What was the re-analysis done for?
- 17 A. The re-analysis was done for samples D9, S10,  
18 S11 and S14.
- 19 Q. What was the reason for that re-analysis?
- 20 A. The reason was that after the first set of  
21 analyses were complete, our quality assurance  
22 office decided that there was -- that there  
23 was a need to have a re-analysis done.
- 24 Q. Do you know what that need was?
- 25 A. My understanding is that the need was because

1 the results were very close to the standards  
2 and that they wanted to make sure that the  
3 results were correct.

4 Q. Do you know of any other -- do you recall any  
5 other reason at this time, why that  
6 re-analysis needed to be done?

7 A. No, not that I can recall.

8 Q. Going back to the -- my earlier question about  
9 whether samples of EAF dust and the  
10 dust/slurry mixture were taken on the 6th, can  
11 you answer that now?

12 A. The samples of the EAF dust and sand/slurry  
13 were taken on the 7th, not the 6th.

14 Q. Can you tell me what samples were taken on the  
15 6th?

16 A. Yes. The two composite samples that were  
17 collected at the landfill of the loads that  
18 were dumped that morning, a sample of the  
19 carrier blast dust collector, a sample of the  
20 knockout dust collector, a sample of the  
21 cabinet blast dust collector, and a sample of  
22 the tumblast dust collector.

23 Q. Can you describe for me how the sample from  
24 the carrier blast dust collector was taken?

25 A. As I recall, the samples from the dust

1 collectors were taken by removing material  
2 from the dust collectors and putting them in a  
3 mixing pan, mixing them and then splitting  
4 samples for giving the facility a sample and  
5 ourselves keeping a sample.

6 Q. Were the methods used for all the dust  
7 collectors the same?

8 A. I don't recall exactly.

9 Q. Well, let's take the carrier blast dust  
10 collector, do you recall how the material was  
11 removed from that dust collector?

12 A. No.

13 Q. Do you recall how it was determined which  
14 material was to be removed from the dust  
15 collector?

16 A. No.

17 Q. Let's go to the knockout dust collector. Do  
18 you recall how that material was removed?

19 A. No.

20 Q. Do you recall how that material was chosen to  
21 be removed?

22 A. No.

23 Q. Do you recall either the method by which  
24 material was removed or the method by which it  
25 was determined which material to remove for



1 any of the dust collectors?

2 A. Not the ones collected on the 6th.

3 Q. If we can move on to the 7th, were any samples  
4 taken involving electric arc furnace dust on  
5 the 7th?

6 A. Yes.

7 Q. What was the first activity which you  
8 conducted on the 7th as far as your sampling  
9 inspection?

10 A. We sampled the south end sand system.

11 Q. Do you recall how that sample was taken?

12 A. No, I don't.

13 Q. What was your next activity?

14 A. We then sampled the sand wash and wet scrubber  
15 slurry.

16 Q. Do you recall how that sample was taken?

17 A. As I recall, it was a tank that we just dipped  
18 the sample out of.

19 Q. Do you recall what device was used to take the  
20 sample?

21 A. I believe -- no, I can't recall.

22 Q. Do you recall how it was determined whether  
23 the sample was to be taken from the tank?

24 A. No.

25 Q. What did you do next?

- 1 A. We then sampled the electric arc furnace dust.
- 2 Q. And how was that sample taken?
- 3 A. That was sampled by removing the dust from the
- 4 hopper that collected the electric arc furnace
- 5 dust in a pan, the pan was then mixed and the
- 6 sample was split.
- 7 Q. How was the dust removed from the hopper?
- 8 A. It was removed at the bottom of the hopper
- 9 where the -- where they would normally load
- 10 trucks at.
- 11 Q. What was the physical process that you went
- 12 through to get this sample? Did you climb a
- 13 ladder?
- 14 A. I don't believe we had to climb a ladder.
- 15 There was an access way that we could get to
- 16 it, as I recall, and we just got up there and
- 17 had it opened a little bit and got the sample
- 18 out of there.
- 19 Q. Was there more than one grab taken of this
- 20 material that was then composited together?
- 21 A. Not as I recall.
- 22 Q. Was there a truck under the baghouse at the
- 23 time the sample was taken?
- 24 A. I don't recall. I don't remember.
- 25 Q. Was there any spillage during this sample

1 taking?

2 A. I don't -- not that I can remember.

3 Q. Which sample number refers to the electric arc  
4 furnace dust sample that you took?

5 A. Sample S09 and S10.

6 Q. Do your notes reflect anything regarding the  
7 way that these samples were taken?

8 A. My notes reflect that the electric arc furnace  
9 dust was collected before it was loaded into  
10 the truck, and it reflects that they were  
11 collected at 1300 hours on that date.

12 Q. Can you please read for the record your  
13 handwritten entry at 1300 hours?

14 A. 1300, "sample D09 and S10 duplicate. EAF dust  
15 before loaded into truck --" no, that's --  
16 that's different.

17 Q. Is there an actual sample labeled S09?

18 A. The sample was labeled -- I'm not sure if the  
19 sample was labeled S09 or D09.

20 Q. If you can refer to your report, Exhibit  
21 Number 2 --

22 A. Yes.

23 Q. -- does that help with what the labeling might  
24 have been?

25 A. No.

1 Q. If we can take your notes, based on your notes  
2 at the 1300 hour entry, is it correct to say  
3 that the notes reflect the two samples were  
4 taken, one labeled D09 and one labeled S10,  
5 and the D samples were duplicates?

6 A. That's correct.

7 Q. Looking at your report, is it correct to say  
8 that as reflected in your report, two  
9 duplicate samples of EAF dust, one listed as  
10 being taken at 1100 hours and one listed as  
11 being taken at 1300 hours, were labeled as S09  
12 and S10?

13 A. Yes.

14 Q. Do you have any idea why the number would be  
15 different in your report and the time when it  
16 was supposed to be taken?

17 A. Well, the number is different in the report  
18 versus the notes because -- I would be  
19 assuming. I would be making an assumption on  
20 it. I shouldn't make an assumption like  
21 this.

22 Q. Okay. What was --

23 A. And the time difference is a typographical  
24 error in the report.

25 Q. So in the report the entry in the time column

1 at S09 should be 1300 rather than 1100?

2 A. Yes, it should.

3 Q. What was your next activity after you took  
4 these two samples -- excuse me, let me back up  
5 a minute.

6 Were these two samples split with the  
7 American Steel Foundry people?

8 A. I believe that, as I recall, we gave them a  
9 sample and kept two samples, labeling one  
10 either S or D09 and the other as ten.

11 Q. So only two samples were taken and kept by  
12 you?

13 A. This was a duplicate sample. We collected  
14 three jars of samples, gave one to the  
15 facility and kept the other two and had them  
16 analyzed separately as S09 and S10.

17 Q. Would these three different jars be any  
18 different in material?

19 A. No.

20 Q. How was that --

21 A. Because they were collected in a pan from the  
22 electric arc furnace hopper, mixed and stirred  
23 and then ran -- and then the jars were filled  
24 by alternating jars, take a scoop from the pan  
25 into say jar number one, then a scoop from the

1 pan into jar number two, and then a scoop from  
2 the pan into jar number three, and then going  
3 back and continuing that series until the jars  
4 were full, all from the same pan that had come  
5 from the electric arc furnace hopper and all  
6 having been mixed in that pan together before  
7 the sample jars were actually filled.

8 Q. Was -- how did you determine what part of the  
9 hopper to remove this electric arc furnace  
10 dust sample from?

11 A. It came right out of the bottom where the  
12 truck loading door was at the bottom of the  
13 hopper, and that was the only access point  
14 that we were aware of for getting a sample out  
15 of the hopper.

16 Q. What did you do next?

17 A. We then observed the truck in question being  
18 loaded.

19 Q. Can you describe what this truck is?

20 A. As I recall, it was a -- it was a quasi tanker  
21 truck. I believe they call them torpedo  
22 trucks.

23 Q. Why do you use the term "quasi tank truck"?

24 A. When I think of a tank truck, I typically  
25 think of a tanker on the road that carries

1 something like gasoline or milk or some type  
2 of liquid, and this did not look like that,  
3 that type of a tank truck, but it was a tank  
4 truck in that there was a tank on this truck,  
5 but it wasn't a typical tank truck that people  
6 would think of as a tank truck.

7 Q. Can you describe what the differences were?

8 A. The difference is basically the body of the  
9 tank, the shape of the body and the  
10 construction of it.

11 Q. Was there any material in this truck prior to  
12 when it was placed under the EAF baghouse?

13 A. Yes, there was.

14 Q. What was that material?

15 A. That was the sand/slurry mix.

16 Q. Did you observe the truck being filled with  
17 this mix?

18 A. No, I did not.

19 Q. Well, first of all, was this sand/slurry mix  
20 or sand/slurry?

21 A. It was a liquid that my understanding was came  
22 from the -- the wet scrubber -- sand wash and  
23 wet scrubber unit, and it was a liquidy  
24 material.

25 Q. You did not observe this being loaded in the

1 truck?

2 A. I did not.

3 Q. Did anyone else from U.S. EPA observe this  
4 being loaded into the truck?

5 A. Yes.

6 Q. Who was that?

7 A. Catherine McCord.

8 Q. You were not present at that time?

9 A. No.

10 Q. Was anyone else from -- was anyone from U.S.  
11 EPA present with Catherine McCord at that  
12 time?

13 A. Not that I recall.

14 Q. If you refer to your notes, can you read the  
15 bottom entry on the page that contains the  
16 1300 entry?

17 A. Can I read it?

18 Q. Please, for the record.

19 A. "Loaded into truck about three-quarters full  
20 of sludge, filled tray with half to one-third  
21 bottle volume of dust during the three minute  
22 cycle."

23 Q. Can you describe the activities that those  
24 notes reflect?

25 A. That describes our collection of the sample --



1 no, that -- that describes the collection of  
2 our sample of the EAF dust.

3 Q. Was a sample of the EAF dust then collected at  
4 the time that the EAF dust was being loaded  
5 into the truck?

6 A. Could you restate that question?

7 Q. The first line of your notes indicates "Loaded  
8 into truck about three-quarter full of  
9 sludge;" correct?

10 A. Yes.

11 Q. Was that truck that was about three-quarters  
12 full of sludge at the EAF baghouse at the time  
13 that you were taking the EAF dust sample?

14 A. Yes. According to my notes, it was.

15 Q. Did you observe the level of what you call  
16 sludge in the truck prior to the time that EAF  
17 dust was being added into the truck?

18 A. I don't recall if I observed it.

19 Q. Did someone else from U.S. EPA observe it?

20 A. I don't recall.

21 Q. Where did the "about three-quarters full of  
22 sludge" entry come from?

23 A. I don't recall.

24 Q. What was the next activity after you had taken  
25 the sample of EAF dust when apparently the --

1 well, as you testified, the truck with sludge  
2 in it was present under the baghouse?

3 A. We followed the truck to the landfill and  
4 observed it dumping its load, and sampled  
5 during the dumping process.

6 Q. Had EAF dust been added to the sludge that was  
7 in the truck at this time?

8 A. Yes, it had.

9 Q. How was this done?

10 A. It was dropped into the truck from the hopper.

11 Q. Did you observe a process by which that  
12 dropping took place?

13 A. According to my notes, they used a three  
14 minute cycle, a timing cycle to measure how  
15 much dust was put into the truck.

16 Q. Were you aware of the process by which  
17 American Steel Foundries mixed the EAF dust  
18 with the clarifier slurry before you went to  
19 ASF to conduct this sampling inspection?

20 A. Not that I recall, I was not aware of it.

21 Q. Had you discussed the process by which the  
22 mixing would take place with anyone prior to  
23 the sampling inspection?

24 A. I don't believe so.

25 Q. What was the objective of the August 1986

1           sampling inspection?

2   A.       The objective was to determine whether  
3           hazardous waste was being improperly disposed  
4           of by the facility.

5   Q.       Did you discuss this objective with anyone  
6           else from U.S. EPA prior to the sampling  
7           inspection?

8                       MS. SUTULA:    Objection.

9   Q.       You can answer.

10                    MS. SUTULA:    Wait a minute.  Do  
11           you have the Complaint in this case with you?

12                    MR. SCHILLAWSKI:   No.

13                    MS. SUTULA:    Do you have any  
14           pleadings?  Give me the notice of deposition.  
15                    Objection.

16                    You can't answer.

17                    Prior to the filing of the  
18           Complaint, that would be prosecutorial  
19           discretion; objection, privileged.  Any  
20           conversations he had prior to, I'm not going  
21           to let him answer it.

22   Q.       Did you have any discussions with anyone from  
23           U.S. EPA as to how the objective of the  
24           sampling inspection was to be carried out  
25           prior to the time that you conducted the

1           sampling inspection?

2                   MS. SUTULA:    Objection as to  
3           methods.

4                   You may answer.

5                   THE WITNESS:   Can I answer?

6                   MS. SUTULA:    If you understand  
7           his question -- why don't you put another  
8           question.

9                   Did you understand the question  
10          before my objection?

11                   THE WITNESS:   I've forgotten the  
12          question.

13   Q.           In conducting sampling inspections, is it a  
14           standard operating procedure to have a defined  
15           objective for those inspections --

16                   MS. SUTULA:    Objection.

17   Q.           -- at U.S. EPA?

18                   MS. SUTULA:    What do you mean by  
19           "objective"?

20                   MR. SCHILLAWSKI:   Can we go off  
21           the record for a minute?

22                   - - - -

23                   (Thereupon, a discussion was had off the  
24           record.)

25                   - - - -

1 Q. Was a written description of the sampling  
2 objective for the August 1986 sampling  
3 inspection prepared?

4 A. No.

5 Q. Was a focus of the August 1986 sampling visit  
6 to sample EAF dust, that's electric arc  
7 furnace dust?

8 A. Yes, that was part of the focus.

9 Q. Was a plan for how to sample EAF dust or the  
10 other streams that were a focus of the  
11 sampling inspection -- inspection, discussed  
12 prior to the sampling inspection?

13 A. To a certain degree, yes.

14 Q. To what degree was it discussed?

15 A. We discussed how to obtain a sample from the  
16 truck as it was discharging.

17 Q. What were those discussions?

18 MS. SUTULA: Objection.

19 Q. What did you discuss on how to take the sample  
20 from the truck while it was discharging?

21 MS. SUTULA: I'm still going to  
22 object, but you may answer.

23 A. We discussed methods of how to obtain such a  
24 sample. As I recall, we discussed how to try  
25 and obtain such a sample.

1 Q. Were there problems involved in obtaining such  
2 a sample?

3 MS. SUTULA: Objection.

4 Q. Go ahead and answer.

5 THE WITNESS: I can answer?

6 MS. SUTULA: Yes.

7 A. I wouldn't say problems, but it's -- it's an  
8 unusual situation to try and collect the  
9 sample from a truck as it's actually  
10 discharging.

11 Q. How was the discharge from the truck  
12 accomplished?

13 A. The discharge was accomplished by the truck  
14 tilting the tank and just letting the material  
15 inside the truck flow out of the back of the  
16 truck into the -- into the landfill.

17 Q. Did that method of discharge pose any  
18 practical problems in taking a sample of the  
19 contents of the truck?

20 A. I wouldn't call them practical problems, but  
21 it called for proper planning on how to  
22 collect those samples -- that sample.

23 Q. Did you have discussions on that planning?

24 A. Yes.

25 Q. Are there any documents or written plans which

1           were prepared, which compiled the results of  
2           those discussions?

3   A.     No.

4   Q.     What plan did you develop for sampling from  
5           the truck discharge?

6   A.     We decided to collect grab samples during the  
7           discharge and then composite them so that we  
8           could get a -- a representative sample of what  
9           was being discharged by the truck.

10  Q.     Did your plan involve the use of any random  
11           number tables or random number generators for  
12           determining when you would take the grab  
13           samples during the discharge?

14  A.     No.

15  Q.     Who did you discuss the sampling plan with  
16           from U.S. EPA?

17  A.     I discussed it with Catherine McCord and I  
18           believe I discussed some of the logistical  
19           portions with Mike Patton.

20  Q.     Did you discuss the sampling plan with anyone  
21           else from U.S. EPA?

22  A.     Not that I can recall.

23  Q.     With any other person?

24  A.     Pardon me?

25  Q.     With any other person not from U.S. EPA?

1 A. No, not that I can recall.

2 Q. Was a focus of your sampling visit to sample  
3 the mixture of EAF dust and clarifier slurry  
4 as it was actually disposed of at the Sebring  
5 landfill?

6 A. Yes.

7 Q. Were samples of this EAF dust, clarifier  
8 mixture taken during the August 7, 1986 visit?

9 A. Yes.

10 Q. Would you please describe the steps that you  
11 took leading up to the taking of those samples  
12 of the dust/slurry mixture?

13 A. We -- when we were at the landfill, we got our  
14 sample bottles ready and we had a sampling  
15 pole that we could use to stick into the  
16 discharge, and we set up the pole and the  
17 sampling bottles and were -- got ready to  
18 collect the sample as they were discharging  
19 the waste stream into the landfill.

20 Q. Please describe how you took the first sample  
21 of EAF dust and slurry mixture.

22 A. As the truck started to empty its load, we had  
23 a long pole with our sample jar on the end of  
24 it, connected to the end of the pole, and we  
25 just stuck that into the flow -- the liquid



1           flowing out of the truck into the landfill, we  
2           just stuck it into the stream and pulled it  
3           out and the jar was filled.

4   Q.       What method did you use to determine at what  
5           time to stick the jar under the stream being  
6           discharged from the truck?

7   A.       As I recall, we decided to go with about five  
8           separate samples beforehand, and we just  
9           decided to divide it up chronologically. When  
10          they started to dump, we took a sample, and  
11          then we took four more samples after that,  
12          during the dumping activity, and used those  
13          for compositing the samples that we sent in  
14          for analysis.

15   Q.       Did you use a stop watch or timer of any kind  
16           to determine when the samples were to be  
17           taken?

18   A.       No.

19   Q.       Was there any sample which was taken of the  
20           contents of the truck prior to the time that  
21           the truck started dumping?

22   A.       Yes, there was.

23   Q.       Can you describe how that sample was taken?

24   A.       The sample in question is sample S14, and  
25           before the load was discharged, Ms. McCord

1           went up top of -- at the landfill, she went on  
2           top of the truck and we had a plastic core --  
3           plastic tube that we could use as a coring  
4           device to take a core sample of at least part  
5           of the way down of the load that was in the  
6           truck.

7           She reached down in there and stuck it  
8           all the way down into the material and then  
9           brought it up, and the material stayed in the  
10          tube and what we were able to determine from  
11          that was that there was dust and then there  
12          was some moist material in the tube, and that  
13          was done, although it was not done initially  
14          as a sample.

15       Q.    Can you explain what you mean by "it was not  
16              done initially as a sample"?

17       A.    It was just done as a demonstration for us to  
18              visibly see if there had been mixed -- any  
19              mixing or how much mixing or if all the dust  
20              had mixed with the slurry, with the liquid.

21       Q.    Was this tube that you used, did it have a cap  
22              on the bottom of the tube that would close  
23              when you had inserted it to keep the sample  
24              inside?

25       A.    No.

- 1 Q. Did it have any other mechanism by which the  
2 sample would be kept inside the tube?
- 3 A. No; no.
- 4 Q. Is the tube which was used what is described  
5 in various EPA publications as a Coliwasa,  
6 C-o-l-i-w-a-s-a?
- 7 A. No.
- 8 Q. Do your notes contain a description of the  
9 procedure that was used to take that core  
10 sample, S14?
- 11 A. No.
- 12 Q. Can you look at the entry under 1410?
- 13 A. Yes.
- 14 Q. I'm not trying to catch you up here, I just  
15 want to make sure we're getting everything  
16 together. There is an entry there which I  
17 believe reads "at landfill took core of top  
18 ten to 12 inches of load, eight to ten inches  
19 of core was dry dust, only bottom --"
- 20 A. "Inch."
- 21 Q. "-- of core was wet."
- 22 A. Um-um.
- 23 Q. Parentheses "damp," close parentheses, "think  
24 this --"
- 25 A. "This."

1 Q. " -- this core became S14" parentheses, "no  
2 split," close parentheses, "not enough  
3 sample"?

4 A. Yes.

5 Q. Did the core tube extend all the way through  
6 the vertical heights of the tank truck when  
7 the sample was taken?

8 A. I don't believe so.

9 Q. Do you know whether any of the EAF dust clung  
10 to the sides of the plastic tube?

11 A. The inside or the outside?

12 Q. The inside.

13 A. Yes, it did.

14 Q. Did any EAF dust cling to the outside of the  
15 plastic tube?

16 A. I don't remember.

17 Q. Isn't it possible that since there was nothing  
18 in the tube that would prevent material from  
19 falling out of the tube, that what you were  
20 getting was, what you're referring to as a  
21 core sample is not in fact a core of the top  
22 ten to 12 inches of the load?

23 A. I don't believe so. I don't believe it's -- I  
24 believe it was representative of the top ten  
25 inches.

1 Q. What do you base that conclusion on?

2 A. There was a moist plug of the damp material  
3 that was holding that arc furnace dust in the  
4 tube.

5 Q. To your knowledge, are there any other notes  
6 which exist in U.S. EPA's files which would  
7 contain a more detailed description of how  
8 sample S14 was taken?

9 A. Not to my knowledge.

10 Q. When was it decided to take S14?

11 A. It was decided to take S14 after we had  
12 collected the sample from the discharge of the  
13 truck, and as I recall, we had one available  
14 sampling -- in our sealing of samples, we had  
15 a certain number of samples that we could  
16 collect and have analyzed, and at that point  
17 it was decided to use the core as a sample.

18 Q. Was the core taken at the time that you  
19 decided to use it as a sample? I'm a bit  
20 confused.

21 A. The core was already taken at the time we had  
22 decided to use it as a sample. It had been  
23 taken previously.

24 Q. Where was the core kept during the time  
25 between when you took it and when you decided

1 to use it as a sample?

2 A. I don't recall.

3 Q. Was it placed in a sample bottle immediately  
4 after it was taken?

5 A. I don't recall.

6 Q. What was the level of material in the tank  
7 truck at the time that the core was taken?

8 A. The tank truck was -- nothing had been  
9 discharged from the truck at that point, so I  
10 don't -- the tank was -- the tank truck was  
11 full.

12 Q. Was the level of material in the tank truck  
13 higher than ten to 12 inches?

14 A. Yes.

15 Q. Was it higher than three feet?

16 A. Yes.

17 Q. Do you recall approximately how much level of  
18 material there would have been in the tank  
19 truck at the time S14 was taken?

20 A. Not exactly, no.

21 Q. Was it more than six feet?

22 A. I did not look down into the hatch to see what  
23 the exact level was, so I could not really say  
24 what the total depth of the material in the  
25 truck was.

1 Q. Who did look down into the --

2 A. Catherine McCord.

3 Q. Do you recall what the outside dimensions of  
4 the tank were in vertical height?

5 A. Approximately eight feet. Eight to ten feet,  
6 probably.

7 Q. Based on your notes which indicate that the  
8 truck was three-quarters full of sludge before  
9 electric arc furnace dust was added, if the  
10 tank was eight feet high, would it be a  
11 correct statement, then, that the sludge level  
12 before the addition of electric arc furnace  
13 dust would have been approximately six feet?

14 A. According to my notes.

15 Q. Would the level have decreased when the  
16 electric arc furnace dust was added?

17 MS. SUTULA: Objection.

18 You may answer.

19 A. No, it would not decrease.

20 Q. Would you expect the level to increase  
21 somewhat?

22 MS. SUTULA: Objection.

23 You may answer.

24 A. Yes.

25 Q. Was sample S14 split with American Steel

1 Foundries?

2 MS. SUTULA: Objection.

3 You may answer.

4 A. No.

5 Q. Do your notes indicate why sample S14 was not  
6 split with American Steel Foundries?

7 A. Yes.

8 Q. Why is that?

9 A. Because there was not enough sample to split.

10 Q. How much volume did S14 consist of?

11 A. Approximately a quart.

12 Q. Did American Steel Foundries request that S14  
13 be split with them?

14 A. Not that I recall.

15 Q. Did you offer to split S14 with American Steel  
16 Foundries?

17 A. Not that I recall.

18 Q. Was there any other reason why S14 was not  
19 split with American Steel Foundries?

20 A. No.

21 Q. Do you recall any reason why a quart of  
22 material was not enough to split?

23 MS. SUTULA: Objection.

24 You may answer.

25 A. Our lab requires that much sample for the



1           analysis.

2       Q.     Was there a full quart of S14?

3       A.     I don't recall.

4       Q.     What was the next sample which was taken after  
5           S14?

6       A.     As far as samples go, S14 was the last sample.

7       Q.     When I am speaking of taking samples, I'm  
8           speaking of the actual physical removal of the  
9           material from the contents of the tank, or  
10          samples which were taken from the tank. Based  
11          on that, what was the next sample taken after  
12          S14?

13      A.     We collected the group of samples from the  
14          discharge as I previously described.

15      Q.     Were those samples placed in sample jars at  
16          that time?

17      A.     Yes.

18      Q.     And were those sample jars numbered as samples  
19          at that time?

20      A.     No. They were -- they were numbered to keep  
21          track of which particular segment that they  
22          were collected during the dump, but they were  
23          not numbered as S11 or S -- I should say S12  
24          or S13.

25      Q.     When the five separate jars of material were

1           taken as the truck was being dumped, was there  
2           a separate jar for each of those?

3   A.     Yes.

4   Q.     Are those the jars that you are referring to,  
5           that were numbered to keep track of the order  
6           in which they were taken?

7   A.     Yes.

8   Q.     Were those jars actual sample jars that were  
9           used for transporting the samples to the  
10          laboratory?

11  A.     They were the same type of jars.

12  Q.     Were they actually used to transport samples  
13          to the laboratory?

14  A.     No.

15  Q.     After you had taken the five jars during  
16          the -- let's back up a little bit.

17                 How fast was the tank truck of  
18                 dust/slurry mixture dumped while you were  
19                 taking the samples in those five jars?

20  A.     I don't have any exact information on how fast  
21          or how long it took for them to dump it.

22  Q.     Did you have any conversation with the truck  
23          driver regarding the speed at which the truck  
24          contents were dumped?

25  A.     As I recall, we asked them to dump -- dump a

1           portion and then slow -- either slow it down  
2           or stop until we could get our next jar ready  
3           for the next part of the sample.

4   Q.       Was this the procedure which the truck drivers  
5           normally followed in dumping the contents of  
6           the truck?

7   A.       I'm not aware of their normal procedure.

8   Q.       Where were you during the period that these  
9           five jars were being taken during the dump?  
10           Where was your physical location with respect  
11           to -- with reference to the truck?

12   A.       I was switching the jars on the end of a pole.

13   Q.       Where was Ms. McCord at this time?

14   A.       She was observing the procedure.

15   Q.       Where was Mr. Patton at this time?

16   A.       He was holding the pole.

17   Q.       Who gave the directions to the truck driver as  
18           to when to slow down or stop the dumping  
19           activity?

20   A.       I don't recall.

21   Q.       Did you do that?

22   A.       I don't recall.

23   Q.       Would you please describe the procedure that  
24           was used to form the sample that was  
25           designated as S13?

1 A. We took the first two aliquots of the sample,  
2 of the five aliquots that were collected and  
3 composited those together in a separate but  
4 larger container, and then we poured into new  
5 bottles that material and you gave -- gave one  
6 to the facility for a split and kept the other  
7 as S13.

8 Q. Do your notes contain a description of this  
9 procedure?

10 A. My notes say "S13, composite and split of  
11 first two jars for first half -- from first  
12 half of dump," so that's what my notes  
13 describe.

14 Q. Can you describe the procedure used to make up  
15 the sample labeled as S12?

16 A. S12 was a composite and split of the last two  
17 jars from the last half of the dump, and it  
18 was done the same way as we composited and  
19 split S13.

20 Q. Do your notes contain a description of the  
21 procedure for S12?

22 A. The first sentence that I read is what my  
23 notes say.

24 Q. That is "Composite and split last two jars  
25 from last half of dump"?

- 1 A. Yes.
- 2 Q. Was S12 split with American Steel Foundries?
- 3 A. Yes.
- 4 Q. What was the next sample that was taken?
- 5 A. Sample S11.
- 6 Q. Could you please read the entry in your notes  
7 after the entry S11?
- 8 A. "Grab of dryer material after dump from  
9 surface of material just dumped," parentheses,  
10 "Dry material had already started to absorb  
11 moisture from slurry," close parentheses.
- 12 Q. Would you please describe the procedure that  
13 was followed in taking sample S11?
- 14 A. S11 was basically a grab sample collected of  
15 the material lying in the landfill after the  
16 dump right from the spot where the material  
17 had came <sup>came from truck</sup> from and fell from the truck, that we  
18 were sampling previously.
- 19 Q. Do you know any other notes that were kept  
20 during this sampling investigation that would  
21 have a more detailed description of the  
22 procedure that was used in S11?
- 23 A. Not that I am aware of.
- 24 Q. What was S11 composed of?
- 25 A. S11 was basically composed of the last bit of

1 material that came out of the truck after we  
2 had stopped collecting our five aliquots.

3 Q. How much volume of that last bit of material  
4 was there?

5 A. I don't have the volume measurements on it. I  
6 couldn't say.

7 Q. Is it a large amount, a small amount?

8 A. I don't recall the amount, how much was left  
9 after we stopped collecting our five aliquots.

10 Q. How much volume of dust/slurry mixture did the  
11 entire tank contain?

12 MS. SUTULA: Objection.

13 Q. You can answer.

14 THE WITNESS: Can I answer?

15 MS. SUTULA: Answer if you know.

16 A. I don't know.

17 Q. What percentage of the total volume of  
18 dust/slurry mixture that the tank contained  
19 was represented by the little bit of dust that  
20 floated out at the end of the dump?

21 MS. SUTULA: Objection.

22 A. I don't know.

23 Q. When was it decided to take sample S11?

24 A. As we observed that final bit of material  
25 coming out and saw that it was -- there was

1 dry material actually coming out of the truck.  
2 Q. Was sample S11 decided to be taken because the  
3 material that came out in the last little bit  
4 was dry?

5 A. As I recall, yes.

6 Q. Had you originally planned at the start of the  
7 sampling inspection, to take a sample of the  
8 type of S11?

9 A. No.

10 Q. Could you please describe whatever  
11 pre-planning was done by you or other U.S. EPA  
12 personnel regarding the mechanism of taking  
13 the samples of the EAF dust and dust/slurry  
14 mixture?

15 MS. SUTULA: Objection. Didn't  
16 he go through that already?

17 MR. SCHILLAWSKI: I believe we  
18 went through it for the EAF dust and the sand  
19 collectors. I'm not sure we went through it  
20 for the dust/slurry mixture.

21 MS. SUTULA: The pole with the  
22 jars on.

23 MR. SCHILLAWSKI: That's a  
24 description of the process that they decided  
25 to use.

1 MS. SUTULA: Ask your question  
2 again. I'm sorry, maybe I misheard it.

3 Q. Could you please describe whatever  
4 pre-planning process was used to determine the  
5 mechanisms to be used in the sampling?

6 MS. SUTULA: Objection.

7 Go ahead.

8 A. We knew the objective was to collect the  
9 sample of the truck as it was being discharged  
10 or being dumped, and just sort of kicked  
11 around ideas on how to actually physically and  
12 logistically collect such a sample, and I  
13 can't give you specifics on what our options  
14 were, but that was what we finally came up  
15 with as the method for collecting the sample.

16 Q. What procedure was used to label the jars  
17 which contained samples S11 through S14?

18 A. We have sample labeling tags that we put on  
19 each jar and they are standard EPA labels --  
20 sample label tags, and they were filled out  
21 and put on the jars as the sample -- or,  
22 after -- directly after the sample was  
23 collected. These tags were filled out and put  
24 on those jars.

25 Q. Was the label for S11 filled out immediately



1           after the sample which became S11 was placed  
2           in the sample jar?

3   A.    As I remember, yes.

4   Q.    Was the label which was placed on sample S12  
5           placed on the jar immediately after the sample  
6           of the truck material was taken from the  
7           truck?

8   A.    It would have been immediately after the  
9           sample was composited, the two aliquots were  
10          composited. At that point, we would have --  
11          we filled out the sample label and attached it  
12          to the sample jar.

13   Q.    How long would that have been after the  
14          aliquots had been taken?

15   A.    It would probably have been around five or ten  
16          minutes, maximum.

17   Q.    Does that same hold true for sample S13?

18   A.    Yes.

19   Q.    Was sample -- the sample label for the jar  
20           that contained sample S14 placed on the jar  
21           immediately after sample S14 was taken from  
22           the truck?

23   A.    No.

24   Q.    How long would it have been after the sample  
25          S14 was taken from the truck?

1 A. I don't recall how long it was after.

2 Q. Does U.S. EPA have a standard operating  
3 procedure regarding the labeling of samples  
4 taken at its sampling inspections?

5 A. I don't believe so.

6 Q. What information was contained on the sample  
7 labels?

8 A. Sample labels have the sample number, the time  
9 of the sample, the date of the sample,  
10 location of the sample and also what the  
11 analytical parameters are to be analyzed for  
12 for that sample, and also the name of the  
13 sampler is on there.

14 - - - -

15 (Thereupon, a photograph was marked  
16 for the purpose of identification as  
17 Defendant's Exhibit 4.)

18 - - - -

19 Q. I'm handing you a photograph that's been  
20 marked as Defendant's Exhibit Number 4. Is  
21 the jar which is present in that photograph  
22 and appears to have a tag on it, a jar that  
23 will contain a sample?

24 A. Yes.

25 Q. Is that tag the sample label that you have

1           been referring to?

2       A.     Yes.

3       Q.     How is it attached to the jar?

4       A.     It's tied on with a string.

5       Q.     Is there any type of a seal on that string,  
6           that would prevent the label from being  
7           removed?

8       A.     No.

9                               - - - -

10                           (Thereupon, a photograph was marked  
11           for the purpose of identification as  
12           Defendant's Exhibit 5.)

13                               - - - -

14                           (Thereupon, a photograph was marked  
15           for the purpose of identification as  
16           Defendant's Exhibit 6.)

17                               - - - -

18       Q.     I'm handing you a photograph that's been  
19           marked as Defendant's Number 5. Can you tell  
20           me what is represented in that photograph?

21       A.     This is a picture of the material in the truck  
22           as it's being dumped into the landfill.

23       Q.     Is that an accurate reflection of the way the  
24           material looked when it was being dumped?

25       A.     I would say so, yes.

1 Q. Going back just to cover myself, is the  
2 photograph that was marked as Defense Number 4  
3 an accurate reflection of the way that the  
4 sampling jars were prepared and that the label  
5 was attached to?

6 A. Yes.

7 Q. I'm handing you a photograph that's been  
8 marked as Defendant's Number 6. Can you  
9 describe what that photograph depicts?

10 A. It also depicts the waste stream coming out of  
11 the back of the truck into the landfill.

12 Q. Does it depict anything else?

13 A. Yes, it depicts the sampling pole and the  
14 sample container.

15 Q. Is that accurate --

16 A. Sampling container, I should say.

17 Q. Is the photograph marked Number 6 an accurate  
18 depiction of the dumping from the truck at the  
19 time a sample was being taken?

20 A. I'd say it's -- there's less volume coming out  
21 than when I remember us taking most of the  
22 samples, the volume -- there was more volume  
23 coming out of the truck than there is in this  
24 particular picture, in picture six, or Exhibit  
25 6.

1 Q. How much volume do you recall coming out of  
2 the truck at the time when those samples were  
3 taken?

4 A. The volume was more like the picture in  
5 Exhibit 5.

6 Q. Was there any time that you recall a sample  
7 was taken when the volume coming out of the  
8 truck would have been as depicted in Number 6?

9 A. Not that I recall.

10 MR. SCHILLAWSKI: This is a  
11 convenient breaking place.

12 - - - -

13 (Thereupon, a luncheon recess was had.)

14 - - - -

15 Q. Mr. Fredle, I'd like to go back to S14 for a  
16 minute if I could. You testified that S14 was  
17 a core sample that was taken from the truck  
18 before the dump.

19 A. Yes.

20 Q. And it was decided to take that core sample as  
21 a sample because you had an extra sample jar  
22 left; does that accurately reflect what you --

23 A. I wouldn't say an extra sample jar, but we had  
24 an extra allocation in the lab for analysis,  
25 we had so many sample analyses that we were

1           able to have done for this particular  
2           inspection, and since we had the extra  
3           availability of it and there was this sample  
4           that Catherine thought would be a good sample  
5           to have analyzed, we had it analyzed.

6   Q.       Did Catherine indicate to you why she thought  
7           it was a good sample to have analyzed?

8   A.       Not that I remember. I don't remember whether  
9           she had indicated to me or not.

10   Q.       Was S14 taken as a sample because it was dry  
11           dust?

12   A.       Probably.

13   Q.       In what order were samples S11 through S14  
14           labeled?

15   A.       S11 through S14, they would have been  
16           labeled -- they would have been labeled --  
17           it's kind of hard to say what order they were  
18           labeled. They would have been labeled,  
19           though, after the samples were collected and  
20           in most of these cases, so the -- let's see if  
21           I have times on these. Let me refer to my  
22           notes here.

23                 Sample S -- S -- no. I don't have an  
24           indication in my notes as to when we actually  
25           labeled the samples.

1 Q. S11 was the last sample that was actually  
2 taken of the material?

3 A. Yes.

4 Q. And S14 was the first sample that was taken  
5 from the truck load of material?

6 A. Yes.

7 Q. Is it true that the core sample which was  
8 eventually labeled as S14, was unlabeled  
9 during the time period that S13, S12 and S11  
10 were being taken?

11 A. Yes.

12 Q. Was that core sample in your physical custody  
13 during that time?

14 A. No.

15 Q. Do you know whose physical custody it was in?

16 A. As I recall, it was not really in anyone's  
17 physical custody. It was just sort of sitting  
18 there.

19 Q. Did you personally observe the core sample  
20 that became S14 during the time period that  
21 the other samples were being taken?

22 A. I don't recall.

23 Q. Did you assign anyone else to keep that under  
24 observation?

25 A. I don't recall assigning anyone.

1 Q. What activities were you engaged in during the  
2 time period from when the core sample was  
3 being taken and when the samples were labeled?

4 A. We were collecting samples S11, S12 and S13.

5 Q. What physical activities were you personally  
6 engaged in during that sample taking?

7 A. I was changing the jars on the end of the pole  
8 when we were collecting the sample from the  
9 dumping.

10 Q. What physical activities was Catherine McCord  
11 engaged in during this time period?

12 A. She was observing our sampling effort.

13 Q. What was her physical position during this  
14 time?

15 A. I don't recall exactly where she was standing.

16 Q. What activities was Mr. Patton physically  
17 engaged in during this time period?

18 A. He was the one working the pole.

19 Q. Is it true that after, immediately after S11  
20 was taken from the little bit of material that  
21 flowed out at the end of the dump, that at  
22 that time you had an unlabeled core sample  
23 which became S14 and five jars which contained  
24 the aliquots of materials that were taken  
25 during the time that the truck dumped the



1 material which it contained?

2 A. Yes.

3 Q. Did you personally take sample S11?

4 A. No.

5 Q. Did you observe it being taken?

6 A. Yes.

7 Q. How large was the material that you referred  
8 to as the little bit of material in relation  
9 to the sample jar that was used to take that  
10 sample?

11 MS. SUTULA: Objection.

12 You may answer if you can.

13 A. It's hard to say. I couldn't really -- I'd be  
14 speculating if I were to answer.

15 Q. What procedure was used to seal the jar as it  
16 contained samples S11 through S14?

17 A. A lid on the jar.

18 Q. Is there a U.S. EPA standard operating  
19 procedure regarding the sealing of samples  
20 taken during a sampling investigation?

21 A. There's a standard procedure that we use, yes.

22 Q. Could you describe that standard procedure?

23 A. To label the jar, tie the label onto the jar  
24 and seal it with a lid, just make sure it's  
25 tightened down.

1 Q. Were the five jars that contained the aliquots  
2 that were then used to make samples S13 and  
3 S12 sealed with lids?

4 A. That, I don't remember.

5 Q. Was an individual custody seal placed on each  
6 jar that contained samples S11 through S14?

7 A. No.

8 Q. What was done with the individual sample jars  
9 after the sampling was completed?

10 A. They were taken back to our office, we packed  
11 them up and sent them to the lab for analysis.

12 Q. How were they taken back to your office?

13 A. In a cooler in our vehicle.

14 Q. Did that cooler also contain the samples that  
15 had been taken earlier that day?

16 MS. SUTULA: Objection.

17 A. I don't remember -- the ones earlier that  
18 day --

19 Q. Earlier on the 7th?

20 A. I don't remember how many containers we may  
21 have had.

22 Q. Do you recall whether the cooler that  
23 contained sample jars S11 through S14 also  
24 contained sample jars D09 and S10?

25 A. I don't recall.

1 Q. Do you recall whether samples D09 and S10 were  
2 present at the landfill when you were taking  
3 the samples S11 through S14?

4 A. They would have been, yes.

5 Q. Were they accessible during that time?

6 MS. SUTULA: Objection. What do  
7 you mean by "accessible"? To who?

8 Q. Were they accessible to non U.S. EPA personnel  
9 during that time?

10 MS. SUTULA: Objection.

11 A. I'm not sure.

12 Q. If you wanted to pick up the sample jar that  
13 contained sample S10 during the time period  
14 that you were taking samples S11 through S14,  
15 could you have done so?

16 MS. SUTULA: Objection.

17 A. Could I have done so? I'm sure I could have.

18 Q. Could anyone else?

19 A. I just don't recall exactly how it was stored.

20 Q. Were the samples S11 through S14 preserved?

21 MS. SUTULA: Objection.

22 A. No --

23 MS. SUTULA: Go ahead.

24 A. No.

25 Q. Does U.S. EPA have a standard operating

1 procedure as to when samples require  
2 preservation?

3 A. Yes.

4 Q. Does that standard operating procedure address  
5 samples that will be sampled for EP toxicity?

6 A. I'm not sure if it addresses EP tox samples,  
7 but there is no preservation for EP toxicity.

8 Q. Was the cooler in which samples S11 through  
9 S14 were transported back to your office,  
10 sealed?

11 MS. SUTULA: Objection.

12 A. I don't recall.

13 Q. Was a custody seal of any type placed on the  
14 cooler?

15 A. Yes.

16 Q. Can you describe that custody seal, please?

17 A. It would have been a yellow tag with a number  
18 on it.

19 Q. Was any information contained on the custody  
20 seal, other than a number?

21 A. No.

22 Q. What would the number have been on the custody  
23 seal?

24 A. EF10-1 or EF10-2.

25 MR. SCHILLAWSKI: Can you mark

1           this as the next exhibit, please?

2                                 - - - -

3                                 (Thereupon, a one-page Environmental  
4           Protection Agency 'Chain of Custody Record,'  
5           dated August 7, 1986, was marked for the  
6           purpose of identification as Defendant's  
7           Exhibit 7.)

8                                 - - - -

9       Q.     Mr. Fredle, I have handed you what's been  
10           marked as Defendant's Exhibit Number 7, do you  
11           recognize this?

12    A.     Yes.

13    Q.     What is it?

14    A.     This is a chain of custody record.

15    Q.     Is this chain of custody record the chain of  
16           custody record for samples taken at the August  
17           6th and 7th sampling inspection at American  
18           Steel Foundries?

19    A.     Yes.

20    Q.     Earlier you referred to the sample custody  
21           seal on the cooler as having the number EF10  
22           or EF10-2 on it.

23    A.     Right.

24    Q.     Were you referring to your copy of Number 7 at  
25           the time?

1 A. Yes, I was.

2 Q. What is the significance of those numbers  
3 which you read?

4 A. Those are the custody seal numbers that we put  
5 on the samples when we ship them.

6 Q. Was the cooler which contained the samples  
7 retained in your custody at all times  
8 following the placing of the samples therein?

9 A. It was retained in either my custody or Mike  
10 Patton's custody.

11 Q. Was there an official log book kept of the  
12 sampling visits on August 6th and 7, 1986, at  
13 American Steel Foundries?

14 A. No.

15 Q. Does U.S. EPA have any standard operating  
16 procedure regarding the keeping of an official  
17 log book during official inspections?

18 A. No.

19 Q. If you can refer back to Exhibit 2 which you  
20 have identified as a report of the sampling  
21 visit, did you have any part in the  
22 preparation or review of this report?

23 A. Yes.

24 Q. What part did you take in that?

25 A. I wrote it.

1 Q. Is it the practice of U.S. EPA to prepare  
2 reports following sampling inspections?

3 A. Yes.

4 Q. Is this report one that you would have  
5 prepared in the ordinary course of your  
6 business as an inspector?

7 A. Yes.

8 Q. Does U.S. EPA have any standard operating  
9 procedure relating to the preparation or  
10 content of these sampling reports?

11 A. Yes.

12 Q. Is this report, Exhibit 2, an accurate  
13 description of your sampling visits at  
14 American Steel Foundries on the 6th and 7th of  
15 August?

16 A. Yes.

17 Q. Is there anything in the report that's not an  
18 accurate description of that sampling visit?

19 MS. SUTULA: Take the time to  
20 read it word for word with that question.

21 A. I would say from a cursory review of the  
22 report, the only incorrect statement is the  
23 timing on table one of sample S09, and that  
24 should be 1300 hours instead of 1100 hours, as  
25 we previously discussed. Everything else, as

1 far as I know, is accurate.

2 Q. Can you refer again to Exhibit Number 3, which  
3 you identified as the first report you did of  
4 the sampling which was later amended by  
5 Exhibit 2?

6 A. Um-um.

7 Q. Did you prepare Exhibit Number 3?

8 A. Yes.

9 Q. Was that preparation in the ordinary course of  
10 your business as a U.S. EPA inspector?

11 A. Yes.

12 Q. What laboratory analyzed the samples?

13 A. U.S. EPA Region V, Central Regional  
14 Laboratory.

15 Q. Where is that located?

16 A. Chicago.

17 Q. How are the samples delivered to the  
18 laboratory for analysis?

19 A. They were delivered by Airborne Express.

20 Q. If you can refer again to I believe it's  
21 Number 7 --

22 A. Yes.

23 Q. -- which you identified as the chain of  
24 custody record, did you take any part in  
25 preparation of this chain of custody record?



1 A. Yes.

2 Q. Can you describe what your participation was?

3 A. Well, I helped fill out the station location  
4 column, I would say that I put in probably  
5 most of the times. I signed it. I'm not sure  
6 about the rest of it. Some of it was done  
7 by -- was not done by me.

8 Q. Do you know who did the parts that you did  
9 not?

10 A. Mr. Patton.

11 Q. Did Catherine McCord have any part in filling  
12 out this chain of custody record?

13 A. No.

14 Q. What is the significance of your signature on  
15 that chain of custody record?

16 A. It's required.

17 Q. Why is it required?

18 MS. SUTULA: Objection.

19 A. It's procedure.

20 Q. What does it mean?

21 A. It means that I was the sampler.

22 Q. Your signature is in a box which is headed  
23 "relinquished by." What is the significance  
24 of that box as opposed to any of the other  
25 boxes on the form?

1 A. That's the person that took the sample  
2 containers, or the coolers containing the  
3 samples to or prepared them for shipment to  
4 Airborne.

5 Q. How many coolers were there?

6 A. Two.

7 Q. What was the distribution of samples within  
8 those individual coolers?

9 A. One cooler would have had samples S01 through  
10 S07 in it, and another cooler would have had  
11 samples S08 through R15 in it.

12 Q. You mentioned that your signature on the chain  
13 of custody record is required by procedure.  
14 What procedure is that?

15 A. Just our standard operating procedure.

16 Q. Is that written down anywhere?

17 A. Yes.

18 Q. Do you have the document which contains that  
19 procedure?

20 A. No.

21 MR. SCHILLAWSKI: I would like to  
22 request that we be provided with a copy of  
23 that document.

24 MS. SUTULA: Have you asked for  
25 it before?

1 MR. SCHILLAWSKI: We asked for  
2 all documents relating to sampling procedures,  
3 and I think that certainly qualifies.

4 MS. SUTULA: I will discuss it  
5 with my colleagues. I don't have a copy of  
6 it. I don't believe it's under your request  
7 for this deposition, but as I said, I'll  
8 discuss it with my colleagues.

9 MR. SCHILLAWSKI: Okay.

10 Q. Were the samples outside of your physical  
11 possession or view at any time during the  
12 period from when they were labeled at the  
13 landfill to when they were delivered to  
14 Airborne?

15 A. They were either in my or in -- in my  
16 possession or Mr. Patton's possession or  
17 locked up in a secured location.

18 Q. Who is your contact at the laboratory  
19 pertaining to the samples?

20 A. I don't remember.

21 Q. Are there any other samples from American  
22 Steel Foundries, to your knowledge, which  
23 tests EP toxicity in materials at the Sebring  
24 landfill, other than samples S11 and S14 which  
25 were taken on August 7, 1986?

1 A. That were taken on the 6th or 7th?

2 Q. That you have knowledge of.

3 A. That I have knowledge of? Not that I have  
4 knowledge.

5 MS. SUTULA: Would you read that  
6 question back to me, what samples he's  
7 referring to?

8 - - - -

9 (Thereupon, the above-referred to  
10 question was read back by the Notary.)

11 - - - -

12 Q. Are there any other sample results which, to  
13 your knowledge, are considered to demonstrate  
14 that hazardous wastes were actually disposed  
15 of in hazardous form at the Sebring  
16 landfill --

17 MS. SUTULA: Objection.

18 Q. -- other than S11 and S14?

19 A. I have no knowledge of other samples from this  
20 facility or from the landfill.

21 Q. Was the torpedo tank which was used by  
22 American Steel Foundries to mix the electric  
23 arc furnace dust with clarifier slurry, during  
24 your August 7, 1986 sampling inspection, used  
25 to contain an accumulation of material?

1 MS. SUTULA: Objection.

2 You may answer if you understand  
3 it.

4 A. I'm not sure what you mean by "accumulation of  
5 material."

6 Q. Was material accumulated in the torpedo tank  
7 which was used by ASF to mix the electric arc  
8 furnace dust with clarifier slurry for your  
9 sampling inspection?

10 MS. SUTULA: Objection.

11 A. I don't know.

12 Q. In the course of your duties for U.S. EPA have  
13 you ever entered American Steel Foundries'  
14 property when American Steel Foundry personnel  
15 were not present?

16 MS. SUTULA: Objection. Do you  
17 want to specify which properties? This  
18 gentleman may not know all properties owned by  
19 American Steel Foundries.

20 Q. In the course of your duties for U.S. EPA have  
21 you ever entered the American Steel property  
22 at the landfill located in Sebring Township,  
23 Ohio, when ASF personnel were not present?

24 MS. SUTULA: Objection.

25 A. Yes.

1 MS. SUTULA: You may answer.

2 Q. Would you describe the circumstances under  
3 which you entered that property?

4 MS. SUTULA: Objection. He  
5 already testified to those circumstances.

6 Q. Who made the decision to enter the landfill  
7 when you entered the landfill?

8 A. I don't think it was actually a decision. We  
9 just went. There was no restricted access to  
10 the landfill area and we just went in there  
11 and waited for the trucks to come.

12 Q. Did you open a gate or cross a fence to enter  
13 the landfill?

14 A. There was no gate.

15 Q. Did any American Steel Foundry representative  
16 ever tell you that it was all right for you to  
17 enter the Sebring landfill when no ASF  
18 personnel were present?

19 MS. SUTULA: Objection.

20 A. No.

21 Q. Did any American Steel Foundry representative  
22 ask you not to enter the landfill property  
23 when no ASF personnel were present?

24 MS. SUTULA: Objection.

25 You may answer.

1 A. No.

2 Q. Did any American Steel Foundries  
3 representative ask you to report your intent  
4 to enter American Steel landfill property  
5 before entering?

6 MS. SUTULA: Objection.

7 You may answer.

8 A. No.

9 Q. Did any American Steel Foundry representative  
10 ever inform you that you were trespassing and  
11 entering the landfill without American Steel  
12 Foundries' invitation?

13 A. No.

14 MS. SUTULA: Objection.

15 A. No.

16 MS. SUTULA: This is ridiculous.  
17 He has the right and authority to enter. I  
18 feel like you're trying to lead the witness  
19 into feeling that something he did might have  
20 been wrong. Can you tell me the purpose of  
21 this line of questioning?

22 MR. SCHILLAWSKI: Yes. We have  
23 raised the defense of unclean hands regarding  
24 trespassing without permission on private  
25 property.

1 MS. SUTULA: You're saying the  
2 statutes and regulations require -- have made  
3 this a trespass? Are you serious?

4 MR. SCHILLAWSKI: Trespass is  
5 defined by state law.

6 MS. SUTULA: And that's supreme  
7 to the federal law which gives them a right to  
8 check on violations, to observe any  
9 violations. Are you saying state laws are  
10 paramount to the federal law in this area?

11 MR. SCHILLAWSKI: I'm saying I  
12 raised the defense and I'm entitled in a  
13 deposition to gain evidence concerning that.

14 MS. SUTULA: It's your money, but  
15 I find these totally objectionable. I really  
16 think they are intended to harass this witness  
17 and make him think he's guilty of doing  
18 something wrong when in fact he's not.

19 You may proceed, but note my  
20 objection, but I'll file a Rule 11 motion. I  
21 think these are highly objectionable questions  
22 to ask the witness when there is no sound  
23 basis in law or fact to do those types of  
24 questions. You may proceed, and I'll take it  
25 up with the court.



1 Q. Did your training as a U.S. EPA employee cover  
2 your powers under the statutes with regard to  
3 entering onto private property?

4 A. More or less.

5 Q. Can you describe what that training was?

6 A. Not offhand.

7 Q. Can you describe your understanding of your  
8 powers under statutes to enter private  
9 property?

10 A. As long as I am not told to leave the  
11 property, that I can enter property.

12 Q. Are you familiar with requirements regarding  
13 U.S. EPA sampling which are contained in  
14 Section 3007 of the Resource Conservation and  
15 Recovery Act?

16 MS. SUTULA: Objection. Show him  
17 what section you're talking about.

18 Q. Are you familiar about -- with any statutory  
19 requirements for U.S. EPA personnel taking  
20 samples under RCRA, to split those samples  
21 with a facility when requested to do so?

22 A. No.

23 Q. Have you had any formal training as a U.S. EPA  
24 employee that covers the requirements to split  
25 samples with facilities when requested to do

1 so?

2 MS. SUTULA: Wait a minute. Read  
3 me that question back.

4 - - - -

5 (Thereupon, the last question was  
6 read back by the Notary.)

7 - - - -

8 A. I don't remember.

9 Q. Are you familiar with a publication titled  
10 'SW-846 Test Methods for Evaluating Solid  
11 Waste'?

12 A. I have heard of it.

13 Q. Would you describe what this publication is?

14 MS. SUTULA: Objection.

15 A. Test methods for evaluating hazardous waste,  
16 just what the title said.

17 Q. Is SW-846 regarded by U.S. EPA as an  
18 authoritative source for evaluating solid  
19 wastes?

20 MS. SUTULA: Objection. It's  
21 outside the scope of education of this witness  
22 and outside of his expertise. I object.

23 Don't answer. That calls for an  
24 opinion you are not qualified to render.

25 Q. Have you read SW-846?

1 A. Parts.

2 Q. What parts have you read?

3 A. I don't remember.

4 Q. Were SW-846 protocols used in the sampling  
5 that was conducted in the August 1986 sampling  
6 inspection at American Steel Foundries?

7 A. I'd say probably in general.

8 Q. Did you refer to SW-846 in developing your  
9 sampling protocols for the August 1986  
10 sampling inspection?

11 A. No.

12 Q. Were any other published protocols used in the  
13 sampling on the August 1986 sampling  
14 inspection?

15 A. No.

16 - - - -

17 (Thereupon, a one-page photocopy of  
18 pages 406 and 407 from the Code of Federal  
19 Regulations, was marked for the purpose of  
20 identification as Defendant's Exhibit 8.)

21 - - - -

22 Q. Have you ever seen the document which has been  
23 marked as Number 8 before?

24 A. Yes.

25 Q. What is it?

1 A. It is two pages out of the Code of Federal  
2 Regulations that deal with the definition of a  
3 hazardous waste.

4 Q. Can you please refer to Section 261.24A?  
5 Could you read that paragraph?

6 A. "A solid waste exhibits the characteristics of  
7 EF toxicity if, using the test methods  
8 described in Appendix II or equivalent methods  
9 approved by the Administrator under the  
10 procedures set forth in 260.20 and 260.21, the  
11 extract from a representative sample of the  
12 waste contains any of the contaminants listed  
13 in Table I at a concentration equal to or  
14 greater than the respective value given in  
15 that table."

16 Q. That's sufficient. Are you familiar with this  
17 regulation?

18 A. Somewhat.

19 Q. Are you familiar with the requirement in this  
20 regulation that a sample of a solid waste to  
21 be tested for EF toxicity must be a  
22 representative sample of the waste?

23 MS. SUTULA: Objection.

24 Read that question back.

25

- - - -

1 (Thereupon, the last question was  
2 read back by the Notary.)

3 - - - -

4 MS. SUTULA: You may answer.

5 A. Yes.

6 Q. Are you familiar with the regulatory  
7 definition of a representative sample?

8 A. Somewhat.

9 - - - -

10 (Thereupon, a one-page photocopy of  
11 pages 378 and 379 from the Code of Federal  
12 Regulations, was marked for the purpose of  
13 identification as Defendant's Exhibit 9.)

14 - - - -

15 Q. Have you seen the document marked as Number 9  
16 before?

17 A. I may have.

18 Q. Do you know what it is?

19 A. It is two pages of definitions from 260.10 of  
20 the federal regulations.

21 Q. Could you please read the definition of a  
22 representative sample?

23 A. "Representative sample means a sample of a  
24 universe or whole," in parentheses, "waste  
25 pile, lagoon, ground water," close

1           parentheses, "which can be expected to exhibit  
2           the average properties of the universe or  
3           whole."

4   Q.    Have you read the sections of SW-846 which  
5           relate to the taking of samples of suspected  
6           hazardous wastes?

7   A.    Yes.

8   Q.    Are you familiar with the mechanism of random  
9           sampling?

10  A.    Somewhat.

11  Q.    Can you please describe this mechanism?

12  A.    Not offhand.

13  Q.    Was any random mechanism used to determine  
14           what part of the material in the tank truck  
15           that contained the dust/slurry mix was taken  
16           as sample S11?

17                   MS. SUTULA:    I will object.

18  A.    I would call it a random sample.

19  Q.    Are you familiar with the SW-846 concept of a  
20           haphazard sample?

21                   MS. SUTULA:    Objection.

22                   You may answer.

23  A.    I have read the term.

24  Q.    Can you describe what it means?

25  A.    Not offhand.

(Thereupon, a multi-paged document entitled 'Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846 Second Edition,' dated 1982, was marked for the purpose of identification as Defendant's Exhibit 10.)

Q. Can you identify the document which has been marked as Defendant's Number 10?

A. 'Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846 Second Edition,' dated 1982.

Q. Have you seen this document before?

A. I believe I have.

Q. Would you please turn to a page which is marked as eight slash sampling dash development? It's somewhere about the tenth or eleventh page in.

Have you read this passage or this material on this page before?

A. I don't remember.

Q. Could you please read the last sentence of the first partial paragraph on that page?

MS. SUTULA: Objection. The

1 document is going to speak for itself. You  
2 want him to read this out loud or to himself?

3 Q. To yourself is fine.

4 A. I have read it.

5 Q. Does that passage deal with the concept of a  
6 haphazard sample, that sentence?

7 MS. SUTULA: Do you want him to  
8 read the last sentence?

9 Q. I'm sorry, the last two sentences. I didn't  
10 see the period.

11 A. What was your question?

12 Q. Do these last two sentences deal with the  
13 concept of a haphazardly selected sample?

14 A. Yes.

15 Q. Is a haphazardly selected sample a  
16 representative sample?

17 MS. SUTULA: Objection. He  
18 hasn't read the whole document. He's read two  
19 lines of it. The document is going to speak  
20 for itself.

21 If what you're saying, Phil, is if  
22 this document says it is not, the document is  
23 going to speak to that. Don't ask him to say  
24 this on reading two lines of it.

25 Q. Was there any conscious bias involved in



1 selecting what part of the material contained  
2 in the tank truck which contained EF  
3 dust/slurry mixture was taken as sample S11?

4 MS. SUTULA: Objection. Are you  
5 asking if he had any bias when he determined  
6 that?

7 MR. SCHILLAWSKI: Yes.

8 Q. Did you have any conscious bias?

9 A. I'm not sure what you mean by "bias."

10 Q. Did you apply any conscious delineation of  
11 which part of the tank of material would be  
12 taken as sample S11 based on the  
13 characteristics of the material that you took  
14 as S11?

15 MS. SUTULA: Objection.

16 Off the record a minute.

17 - - - -

18 (Thereupon, a discussion was had off  
19 the record.)

20 - - - -

21 Q. When you decided to take sample S11, did you  
22 consciously attempt to take S11 as a sample  
23 which would affect the outcome of that sample?

24 A. No.

25 Q. Did you consciously select sample S11 as being

1 material which differed from the majority of  
2 the material that was contained in the tank  
3 truck of the dust sludge mixture?

4 A. Could you re-read that?

5 - - - -

6 (Thereupon, the last question was  
7 read back by the Notary.)

8 - - - -

9 A. Not that I can remember, no.

10 Q. Did the material which you took as sample S11  
11 exhibit different appearance or physical  
12 properties that you could observe, that were  
13 different from the majority of the material  
14 that was contained in the tank load of  
15 material that was disposed of at the landfill?

16 A. Yes.

17 Q. I believe you testified earlier that you took  
18 sample S11 because it was dry?

19 A. Right.

20 Q. Did the majority of the material that was  
21 contained in the tank truck that was disposed  
22 of at the landfill consist of dry material?

23 MS. SUTULA: Objection. At which  
24 point in time?

25 Q. When the sample -- when the tank truck was

1           dumped at the Sebring landfill, did the  
2           majority of the material that was dumped at  
3           the landfill from the tank truck consist of  
4           dry material?

5       A.     No.

6       Q.     Was there any difference, based on the fact  
7           that you took S11 because it was dry, that the  
8           majority of the material was -- based on your  
9           testimony that you took S11 because it was  
10          dry, and your testimony that the majority of  
11          the material at the time it was dumped from  
12          the truck at the Sebring landfill was not dry,  
13          was there a conscious decision on your part to  
14          take material as sample S11 which differed  
15          from the majority of the material that was  
16          disposed of at the Sebring landfill?

17      A.     Yes.

18      Q.     Based on your experience, would U.S. EPA  
19           accept a sample that was deliberately taken as  
20           being -- a different character of the majority  
21           of the material of which a waste was composed,  
22           as being a representative sample of that  
23           waste?

24      A.     I don't know.

25      Q.     Does the dip tube that was used to take the

1 core sample that was specified -- labeled as  
2 S14 operate in the same manner as a Coliwasa?

3 A. No.

4 Q. What is the difference between the two?

5 A. There is no valve or any kind of a controlling  
6 mechanism in the dip tube, as you call it, as  
7 there is -- as there is in a Coliwasa.

8 Q. Would the instructions which are contained in  
9 SW-846 which refer to the use of a Coliwasa in  
10 terms of the use of that device to obtain a  
11 representative sample apply as well to the dip  
12 tube that you used for a core sample?

13 A. I don't know.

14 MS. SUTULA: Objection.

15 Q. Are you familiar with the SW-846 procedures  
16 for sampling containers and tanks?

17 A. Somewhat.

18 Q. Could you please refer to Exhibit 10, SW-846  
19 at -- I apologize here -- a page marked --  
20 this is I believe the third page from the  
21 back, "two" slash "sampling" dash  
22 "methodology."

23 A. Yes.

24 Q. Could you -- have you seen this section  
25 before?

1 A. I could have. I don't remember.

2 Q. Could you re-read the last paragraph above the  
3 line that says "1.4.2 tanks"?

4 MS. SUTULA: I object to the use  
5 of the term "re-read," when he didn't testify  
6 that he had read it before.

7 A. I have read it.

8 Q. Was the tank truck containing the dust/slurry  
9 mixture from which the dip tube sample which  
10 became S14 was taken constructed so that  
11 access to the contents was restricted?

12 A. As I read the definition here in this -- or  
13 the statement here in this paragraph, I would  
14 have to say yes.

15 Q. Was the restriction such that sampling with  
16 the dip tube was essentially restricted to a  
17 single vertical plane of the tank?

18 A. Yes.

19 Q. Was the material contained in the tank  
20 homogeneous?

21 A. No.

22 Q. Based on your reading of the paragraph which  
23 you have read from SW-846, is the dip tube  
24 sample that was taken from the tank truck  
25 containing the dust/slurry mixture a

1 representative sample of that mixture?

2 MS. SUTULA: Objection. It's  
3 outside of this witness's area, he's not an  
4 expert on sampling, and we have not listed him  
5 as such. It calls for an opinion, and I'm  
6 going to tell him to refuse to answer, and  
7 also, you're giving him one paragraph out of I  
8 don't know how many pages, but a quite lengthy  
9 document, and then asking him to draw a  
10 conclusion which he's not qualified to do.

11 You don't have to answer that  
12 question.

13 Q. Was any grid work drawn of the volume of the  
14 tank that was containing the electric arc  
15 furnace dust/slurry mixture prior to samples  
16 being taken?

17 A. No.

18 Q. Were any random numbers used to pick what  
19 portions of the volume of the tank would be  
20 taken as samples?

21 A. No.

22 Q. Are you familiar enough with the SW-846  
23 procedure for sampling tanks and containers to  
24 recognize that they specify a grid work be  
25 drawn for sampling of tanks and containers to

1           assure a representative sample?

2   A.       No.

3           MS. SUTULA:    Objection.

4   Q.       Was there any random -- was there any use of  
5           random numbers in determining what part of the  
6           tank volume would be taken as samples S11  
7           through S14?

8           MS. SUTULA:    Objection.

9           You may answer.

10   A.       No.

11   Q.       Are you familiar with the procedures contained  
12           in SW-846 regarding chain of custody?

13   A.       I'm not sure.

14   Q.       Have you read those procedures?

15   A.       I may have at one point in time.

16   Q.       Were separate sample seals used for each jar  
17           which contained a sample collected in the  
18           American Steel Foundries sampling inspection  
19           for chain of custody purposes?

20   A.       Did you say separate on each sample and  
21           container?

22   Q.       Yes.

23   A.       No.

24   Q.       Are you familiar with the SW-846 procedure  
25           regarding the keeping of a field log book

1 during any sampling investigation?

2 A. No.

3 Q. To your knowledge, has anyone at U.S. EPA, who  
4 is an expert on sampling, reviewed the  
5 sampling inspection which was conducted in  
6 August 1986 at American Steel Foundries?

7 MS. SUTULA: Objection.

8 Read that question back.

9 - - - -

10 (Thereupon, the last question was  
11 read back by the Notary.)

12 - - - -

13 MS. SUTULA: I'm going to  
14 withdraw my objection. The witness may answer  
15 yes or no.

16 A. I don't know.

17 MS. SUTULA: I didn't know if  
18 there would be anything privileged.

19 - - - -

20 (Thereupon, a one-page memorandum  
21 from Andrea Jirka to 'Files,' dated November  
22 5, 1986, was marked for the purpose of  
23 identification as Defendant's Exhibit 11.)

24 - - - -

25 Q. Mr. Fredle, this is a document which has been



1 marked as Defendant's 11. Have you seen it  
2 before?

3 A. Yes.

4 Q. Could you please identify it?

5 A. It's a memorandum dated November 5, 1986,  
6 subject EDO 3424 dash EP tox results.

7 Q. What does this memorandum signify?

8 A. It signifies a memorandum from the laboratory  
9 to the files about the sampling done at -- or  
10 the analytical work done on the samples from  
11 this inspection.

12 Q. Did you have any part in the preparation of  
13 this memorandum?

14 A. No.

15 Q. Did you receive it, or a copy of it, in the  
16 course of your duties at the U.S. EPA?

17 A. I have seen a copy of it, yes.

18 Q. If you will refer to the second paragraph,  
19 this paragraph refers to a possible sample  
20 mix-up in the laboratory; is that correct?

21 A. Yes.

22 MS. SUTULA: The document speaks  
23 for itself, he didn't write it, didn't have  
24 any part in the preparation.

25 Q. Does the samples which are the subject of this

1 memorandum -- are the samples which are the  
2 subject of this memorandum, the samples that  
3 were taken at American Steel Foundries'  
4 sampling inspection in August 1986?

5 MS. SUTULA: Objection. The  
6 document speaks for itself. It states that in  
7 the first line.

8 You may answer.

9 A. Yes.

10 Q. Have you had any contact with the laboratory,  
11 other than this document, regarding the  
12 potential sample mix-up at the laboratory?

13 A. Only as stated in the document, that I can  
14 remember.

15 Q. Do you have any personal knowledge of what the  
16 mix-up at the laboratory -- possible mix-up at  
17 the laboratory could involve?

18 A. No.

19 Q. Do you know who would?

20 A. No.

21 MS. SUTULA: Can we take a  
22 break?

23 - - - -

24 (Thereupon, a recess was had.)

25 - - - -

1 Q. Does sample S14 represent the average  
2 properties of the volume of dust/sludge  
3 mixture which was disposed of at the Sebring  
4 landfill on August 7, 1986?

5 MS. SUTULA: Objection. Again,  
6 that is outside this witness's area of  
7 expertise. He's not been qualified and has  
8 not testified to having the education or  
9 experience of a chemist, and I think that's  
10 beyond his expertise.

11 You're not to answer that.

12 Q. Did you, or to your knowledge, did anyone else  
13 from U.S. EPA, in the preparation for the  
14 sampling inspection on August 7, 1986 at  
15 American Steel Foundries, take steps to assure  
16 that the samples that were taken during that  
17 day represented the average properties of the  
18 volume of material from which they were taken?

19 MS. SUTULA: Objection.

20 You may answer.

21 A. I don't know.

22 Q. Did you yourself?

23 A. No.

24 - - - -

25 (Thereupon, various field

1 investigation worksheets were marked for the  
2 purpose of identification as Defendant's  
3 Exhibit 12.)

4 - - - -

5 MR. SCHILLAWSKI: I want to state  
6 for the record that this document, which has  
7 been marked as Defendant's 12, consists of  
8 five pages, each of which was produced during  
9 Mr. Patton's deposition and each of which is  
10 individually marked as an exhibit from that  
11 deposition.

12 MS. SUTULA: May I inquire as to  
13 whether or not these were produced as a  
14 packet?

15 MR. SCHILLAWSKI: They were not,  
16 to my knowledge, produced as a packet, a  
17 stapled together packet; however, from their  
18 numbering, they appear to have been produced  
19 as a sequence, although the sequence is not  
20 as -- as they are put together here. I'm  
21 going to ask some questions to try to clear  
22 that up here.

23 Q. Mr. Fredle, have you seen the five pages that  
24 make up this exhibit before?

25 A. Yes.

1 Q. Are these five pages all part of the same  
2 document?

3 A. Basically, yes.

4 Q. What is that document?

5 A. It's actually a package of documents that are  
6 typically used whenever we do a sampling  
7 inspection.

8 Q. Were these -- was this package of documents  
9 filled out prior to the August 1986 sampling  
10 inspection at American Steel Foundries?

11 A. Yes.

12 Q. And does Exhibit 12 refer to the August 1986  
13 sampling inspection at American Steel  
14 Foundries?

15 A. Yes.

16 Q. Is it a standard procedure for U.S. EPA to  
17 prepare this package of documents for sampling  
18 inspections?

19 A. Yes, it was at the time.

20 Q. Would the package of materials which is bound  
21 together as Exhibit 12 have been prepared in  
22 the ordinary course of your business as a U.S.  
23 EPA inspector?

24 A. Yes.

25 Q. Did you prepare this package marked as Exhibit

- 1 12?
- 2 A. Yes, most of it.
- 3 Q. What parts did you not prepare?
- 4 A. Page three, -- page three.
- 5 Q. Who prepared page three?
- 6 A. Mr. Burge.
- 7 Q. Do you know Mr. Burge's full name?
- 8 A. Bud Burge.
- 9 Q. What is his position?
- 10 A. Chemist.
- 11 Q. Is he a U.S. EPA employee?
- 12 A. Yes -- no, he's not presently.
- 13 Q. Was he at the time this document was prepared?
- 14 A. Yes.
- 15 Q. Do you know where Mr. Burge is presently
- 16 employed?
- 17 A. No.
- 18 Q. If I can direct your attention to page one,
- 19 the section that says "special requests,"
- 20 that -- can you tell me what that section is
- 21 normally used for?
- 22 A. Normally it's used for taking down notes on
- 23 any special requests that might be asked for
- 24 by the requesting program.
- 25 Q. The line in that section that says "parameters

1 will be EP tox fluoride, cyanides, phenol,"  
2 what does that mean?

3 A. That means that that -- those are the  
4 parameters that we were requested to have  
5 sampled for and analyzed for.

6 Q. Are cyanides, fluorides and phenols part of  
7 the federal hazardous waste program?

8 A. I'm not sure offhand.

9 Q. Did you decide to analyze the samples for  
10 those parameters?

11 MS. SUTULA: Objection.

12 You can answer.

13 A. No.

14 Q. Do you know who did?

15 A. This was the request from the -- from the  
16 program that requested the inspection and  
17 the -- the sampling inspection.

18 Q. What program requested the sampling  
19 inspection?

20 A. The RCRA program.

21 Q. Who was your contact with that program?

22 A. Catherine McCord.

23 Q. Do you know whether Catherine McCord requested  
24 those analyses?

25 A. Yes.

1 Q. Did she?

2 A. Yes.

3 Q. If I can direct your attention now to page  
4 five of five, the section toward the bottom is  
5 marked "field modifications to survey plan."  
6 What is that section normally used for?

7 A. It normally would be used for field  
8 modifications if -- if you wanted to make note  
9 of them or use it as such.

10 Q. Was the standard operating procedure, which  
11 required the use of this packet of materials,  
12 to fill in this section if there were any  
13 modifications in the field to the survey plan?

14 A. Well, that's what it was there for.

15 Q. Was there a survey plan for the American Steel  
16 Foundries inspection?

17 A. No.

18 Q. At the top of page five of five, there is a  
19 line labeled "actual investigation date" with  
20 the date 8-4-86 in the blank.

21 A. Um-um.

22 Q. Is that the correct date of the actual  
23 investigation?

24 A. No, it's not.

25 Q. There is a line at the bottom of page five of



1 five for a signature.

2 A. Yes.

3 Q. Whose signature normally would appear in that  
4 line?

5 A. I don't remember how those would have been  
6 filled out.

7 Q. Is it part of the standard operating procedure  
8 for areas on this packet of forms which were  
9 left blank for signature to have a signature  
10 affixed to them?

11 MS. SUTULA: Objection.

12 A. Not necessarily.

13 Q. I believe that is the last of the questions  
14 that I have for you, Mr. Fredle. I would like  
15 to thank you for being here.

16 A. Okay.

17 Q. I appreciate your taking the time, although it  
18 was --

19 A. Did I have a choice? If I did, I wouldn't be  
20 here, but what can I say, it's part of the  
21 job.

22 MS. SUTULA: Note for the record  
23 that signature isn't waived.

24

25

  
JOSEPH J. FREDLE

1           The State of Ohio,       )  
2           County of Cuyahoga.   )   SS:

3                               CERTIFICATE

4           I, Joyce L. Polinsky, a Notary Public  
5           within and for the State aforesaid, duly  
6           commissioned and qualified, do hereby certify  
7           that the above-named JOSEPH J. FREDLE was by  
8           me, before the giving of his deposition, first  
9           duly sworn to testify the truth, the whole  
10          truth, and nothing but the truth;

11          That the deposition as above set forth was  
12          reduced to writing by me by means of  
13          stenotypy, and was later transcribed upon a  
14          computer by me;

15          That the said deposition was taken in all  
16          respects pursuant to the stipulations of  
17          counsel herein contained; that the foregoing  
18          is the deposition given at said time and place  
19          by said JOSEPH J. FREDLE;

20          That I am not a relative or attorney of  
21          either party or otherwise interested in the  
22          event of this action.

23          IN WITNESS WHEREOF, I hereunto set my hand  
24          and seal of office, at Cleveland, Ohio this  
25          22nd day of December, A.D. 1989.

\_\_\_\_\_  
Joyce L. Polinsky, Notary Public  
528 Citizens Building  
Cleveland, Ohio     44114

My Commission expires September 28, 1991.

EPOR [REDACTED] PAPER [REDACTED] . CO. [REDACTED] VILLI [REDACTED]

[illegible]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

1	UNITED STATES OF AMERICA,	)	
2		)	
3	Plaintiff,	)	
4		)	CIVIL ACTION C87-1284B
5	VS	)	JUDGE LAMBROS
6	AMSTED INDUSTRIES, INC., d/b/a	)	
7	AMERICAN STEEL FOUNDRIES,	)	
8	Defendant.	)	

I hereby certify that I have read the foregoing transcript of my deposition given on the 9th day of April, 1990, at the time and place aforesaid, and I do again subscribe and make oath that the same is a true, correct and complete transcript of my deposition given as aforesaid, with correction sheet(s).

\_\_\_\_\_ correction sheet(s) attached.

\_\_\_\_\_  
CATHERINE A. McCORD, Deponent

SUBSCRIBED AND SWORN TO  
before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 1990.

\_\_\_\_\_  
NOTARY PUBLIC

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION C87-1284B
VS	)	JUDGE LAMBROS
	)	
AMSTED INDUSTRIES, INC., d/b/a	)	
AMERICAN STEEL FOUNDRIES,	)	
	)	
Defendant.	)	

The continued deposition of CATHERINE A. McCORD, called by the defendant for examination, pursuant to notice and pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Bernard Lake, Certified Shorthand Reporter and Notary Public within and for the County of Cook and State of Illinois, at 230 South Dearborn Street, Chicago, Illinois, on Monday, the 9th day of April, A.D. 1990, commencing at the hour of nine o'clock a.m.

A P P E A R A N C E S:

UNITED STATES DEPARTMENT OF JUSTICE  
230 South Dearborn Street  
Chicago, Illinois 60604, by  
MS. KATHLEEN SUTULA

and  
MR. RICHARD CLARIZIO,

Appeared on behalf of Plaintiff;

MESSRS. SQUIRE, SANDERS & DEMPSEY  
Bancohio National Plaza  
155 East Broad Street  
Columbus, Ohio 43215, by  
MR. PHILIP C. SCHILLAWSKI,

Appeared on behalf of Defendant.

I N D E X

WITNESS:

Page

Catherine A. McCord

Examination throughout by Mr. Schillawski.

EXHIBITS:

Defendant's McCord Deposition Exhibits:

No. 46	9
No. 47	9
No. 48	10

1 MR. SCHILLAWSKI: This is continuation of a  
2 deposition that was started before, and if there is  
3 no problem with it, I would like to go sequentially  
4 with the exhibit numbers.

5 We ended with 45, with the last one,  
6 so the first one is 46.

7 Part of the questions I will be asking  
8 are with reference to photographs that Catherine  
9 spoke of being in existence the last part of the  
10 deposition.

11 If there is no problem, rather than  
12 having her go through and identify every one of  
13 these photographs, I would like to have her go  
14 through and just pick out the ones that she was  
15 referring to specifically.

16 MS. SUTULA: Well, ask her the question.  
17 I don't know if she can or cannot.

18 MR. SCHILLAWSKI: Okay.

19 C A T H E R I N E M c C O R D

20 called as a witness on behalf of the defendant, having  
21 been first duly sworn, was examined and testified as  
22 follows:  
23  
24

## DIRECT EXAMINATION

BY MR. SCHILLAWSKI:

Q Ms. McCord, have you reviewed any documents to refresh your recollection in any elements related to this deposition since the last time that we spoke during the other deposition?

A I have looked at some of the documents, yes.

Q Have you brought them with you?

A No, I have not.

Q Could you please identify which documents you referred to to refresh your recollection?

A I briefly looked through many different files related to this case.

Q In your corrections to the transcript of your last deposition, you indicated that in response to a certain question I had asked regarding what protocols you had used to insure that the samples taken at an August 6th and 7th --

MS. SUTULA: Can you point out the question to her?

MR. SCHILLAWSKI: Certainly.

Q Page 284, line 5. The initial question is page 283, line 16.



1                   The question was -- well, maybe we'd  
2 better pick up to line 1.

3                   The question was:

4                   "Is there -- is the random sampling  
5 procedure and protocol contained in the sampling  
6 section of SW-846 used in the sampling inspection  
7 that was conducted at the August 6th and 7th, 1986,  
8 sampling inspection at the American Steel Foundries?"

9                   Your answer was:

10                  "At the landfill?"

11                  "Question. Yes

12                  "Answer. No.

13                  "Question. What other protocol was used?"

14                  Your answer was:

15                  "Other than random sampling?"

16                  "Question. Was random sampling used?"

17                  "Answer. I just said no.

18                  "Question. What other protocol was used?"

19                  Your answer was:

20                  "Grab samples."

21                  My question:

22                  "Question. Was there any written protocol  
23 that you used to guide your taking of the grab  
24 samples on August 6th and 7th?"

1 Your answer was:

2 "Answer. EPA Standard Field Techniques."

3 My question was:

4 "Are those included in any written documents  
5 anywhere?"

6 Your answer:

7 "Answer. They're included and probably  
8 referenced in various types of documents."

9 My question was:

10 "Question. Would you please identify  
11 these documents if they are referenced."

12 And Ms. Sutula posed an objection and  
13 said, "If you can."

14 And your answer was:

15 "Answer. I can't do that, no."

16 In the corrections you indicated that  
17 that "No" at the end of the sentence should be  
18 replaced with "without refreshing my memory."

19 Have you been able to refresh your  
20 memory with respect to those documents on sampling  
21 protocols?

22 A I do recall that there are other documents  
23 that reference sampling techniques, yes.

24 Q Can you identify those documents, please?

1           A     Not specifically that had reference to  
2 random sampling or taking a collection of grab  
3 samples. It's referenced in numerous EPA Field  
4 Guidances.

5           Q     So you are unable at this time to point  
6 out which particular EPA Field Guidance you are  
7 referring to?

8           A     Specifically the first one, the primary  
9 document would be SW-846, but there are other EPA  
10 Field Guidances.

11          Q     You cannot identify those other EPA Field  
12 Guidances right now?

13          A     Not by title, no.

14          Q     You have indicated that SW-846 random  
15 sampling protocols were not used in the August 6th  
16 and 7th sampling, is that not correct?

17          A     I did indicate that, yes.

18          Q     Were they used?

19          A     No. Grab samples.

20               MR. SCHILLAWSKI: Off the record for a  
21 second.

22                               (Discussion was had off the  
23 record.)

24 BY MR. SCHILLAWSKI:

1           Q     Do you recall any specific written  
2 guidances other than SW-846 that you used in  
3 developing the sampling protocol that were used on  
4 August 6th and 7th, 1986?

5           A     There were no specific documents that  
6 were referenced for that sampling effort, rather  
7 it was a culmination of my experience and knowledge  
8 through review of numerous EPA documents on sampling  
9 and also on several classes that I have taken.

10          Q     So you don't recall exactly which  
11 documents were used?

12          A     Well, again --

13          Q     In your development of the specific  
14 sampling protocols used on August 6th and 7th of  
15 1986, --

16               MS. SUTULA: Objection. Go ahead.

17 BY THE WITNESS:

18          A     The primary document is SW-846, test methods  
19 again for solid waste.

20               MR. SCHILLAWSKI: Can we go off the record.

21                       (Discussion was had off the  
22 record.)

23               MR. SCHILLAWSKI: Back on the record.

24          Q     Ms. McCord, do you recall in our past

1 discussions in your earlier deposition, you indicated  
2 that there was a photograph which involved you  
3 pointing out the level of the underflow slurry from  
4 the sand washer clarifier that was contained in a  
5 tank truck parked under the EAF bag house prior to  
6 the time EAF discharged that truck?

7 A That's correct.

8 Q I would like, if you could go through  
9 these photographs that you have provided me and  
10 identify that particular photograph, if you would.

11 A You want me to look through all of these  
12 packages of photographs?

13 Q Unless you know for sure where they are?

14 A Well, --

15 MR. SCHILLAWSKI: Will you mark this as  
16 Exhibit No. 46, please, and this as Exhibit 47.

17 (WHEREUPON, said photographs  
18 were marked as requested,  
19 Defendant's McCord Deposition  
20 Exhibit Nos. 46 and 47 for  
21 identification, as of 4/9/90.)

22 THE WITNESS: Are these the same photographs?  
23 They look like duplicates.

24 MR. CLARIZIO: Can we go off the record

1 for a second?

2 MR. SCHILLAWSKI: Sure.

3 (Discussion was had off the  
4 record.)

5 BY THE WITNESS:

6 A With respect to the activities that you  
7 requested me to identify --

8 BY MR. SCHILLAWSKI:

9 Q Handing you a photograph that has been  
10 marked as Defendant's Exhibit 46 --

11 Mark this 48.

12 (WHEREUPON, said photograph  
13 was marked as requested,  
14 Defendant's McCord Deposition  
15 Exhibit No. 48 for identifi-  
16 cation, as of 4/9/90.)

17 BY MR. SCHILLAWSKI:

18 Q Can you identify what is represented in  
19 this photograph?

20 A It is to EPA -- U.S. EPA personnel, one  
21 on top of the -- a transport vehicle, and one  
22 standing off to the side.

23 Q The one standing off to the side is you,  
24 is that not correct?

1           A     That's correct.

2           Q     Handing you what has been marked as  
3 Defendant's Exhibit No. 47, is there any significant  
4 difference between what is represented in those two  
5 photographs?

6           A     No.

7           Q     What are you doing in these photographs?

8           A     I'm holding my left arm up in the arm with  
9 a Field notebook, indicating a position on the  
10 exterior of the transport vehicle.

11          Q     What does that position represent?

12          A     That indicates the level of liquid material  
13 inside the tank as judged by the person on top of  
14 the transport vehicle.

15          Q     And approximately what percentage or  
16 fraction of the level is being indicated?

17          A     By height of the tank or by volume?

18          Q     Well, if you can give me an estimate of  
19 the volume, that would be good. But otherwise,  
20 height of the tank would be fine.

21          A     If you can give me overall dimensions of  
22 the tank, I could make such judgment.

23          Q     Why don't we just limit it to height up  
24 to the tank then.

1 MS. SUTULA: Objection. The evidence is  
2 the photograph speaks for itself in terms of where  
3 she's indicating. That is what she testified that  
4 the photograph indicates.

5 MR. SCHILLAWSKI: In response to your  
6 objection, in her past testimony she indicated that  
7 with the photograph to refresh her memory, she can  
8 give us a level or fraction of the height, because  
9 she had indicated in her earlier testimony a fraction  
10 that was different from that fraction recorded in  
11 Mr. Fredel's testimony and in the sampling report  
12 for the August 6th and 7th sampling.

13 MR. CLARIZIO: Well, I still think the  
14 photograph speaks for itself, but if she can  
15 answer it.

16 If you can answer it, go ahead.

17 THE WITNESS: I would like to request  
18 that I could -- Could you show me where in my  
19 deposition this discussion is indicated so I can  
20 refresh my memory?

21 MR. SCHILLAWSKI: All right. Off the  
22 record for a second.

23 (Discussion was had off the  
24 record.)



1 MR. SCHILLAWSKI: Actually, now that I  
2 have refreshed my recollection, I withdraw my  
3 question.

4 THE WITNESS: Glad I asked.

5 BY MR. SCHILLAWSKI:

6 Q Okay, if we can go on to a photograph  
7 which I am handing you that has been marked  
8 Exhibit No. 48.

9 Can you identify what is represented  
10 by that photograph?

11 A It is a photograph of a Lexon Tube, a  
12 clear Lexon Tube that contains waste material.

13 Q Is that tube the tube that was used to  
14 take the grab sample -- excuse me, the -- as you  
15 referred to it earlier, a core sample of material  
16 that became sample S/14.

17 A I recall that this material did -- was  
18 analyzed and did become a sample. I don't recall  
19 without refreshing my memory that the sample number  
20 was S/14.

21 Q I can help on that. I am handing you  
22 what was Exhibit 12 in the earlier portion of your  
23 deposition, does that document help you refresh  
24 your recollection of the sample number?

1           A     It does. The document indicates that  
2 sample S/14 was a core of the load.

3           Q     Is the tube represented in Exhibit 48 the  
4 tube which was containing the material which became  
5 sample S/14?

6           A     Yes.

7           Q     Does the photograph in S/14 -- excuse me,  
8 Exhibit No. 48, enable you to give a better estimate  
9 as to the amount of material in terms of vertical  
10 inches that were present in the core sample that  
11 became S/14?

12           MS. SUTULA: Better than what?

13           MR. SCHILLAWSKI: Better than earlier  
14 testified.

15           MS. SUTULA: What was her earlier testimony?

16           MR. SCHILLAWSKI: Her earlier testimony  
17 was approximately two feet, if I remember correctly.

18           MS. SUTULA: Well, if you are going to  
19 use "better" in your question, give her what her  
20 earlier testimony was, because she can't compare it  
21 if she doesn't know what her earlier testimony was.  
22 BY MR. SCHILLAWSKI:

23           Q     The earlier question was at line 6 on  
24 page 197 of the earlier transcript.

1 My question was:

2 "Question. Was there any indication about  
3 how much sample was contained in the tube, how much  
4 vertical distance of the tube was filled with the  
5 material when you withdrew it from the tube?"

6 Your answer was:

7 "Answer. Two and a half feet, approximately.  
8 I'd have to look at the photograph to refresh my  
9 memory. Two feet."

10 Can you give me a better indication now  
11 that you have the photograph to refresh your  
12 recollection?

13 A The photograph does not indicate the entire  
14 length of the Lexon Tube.

15 Q Does the photograph give you an indication  
16 of what vertical distance would be represented by  
17 the material which you had earlier referred to as  
18 being dry?

19 A Are you talking about the material that  
20 I removed from the truck or material that was in the  
21 truck?

22 Q Material in the Lexon Tube?

23 A I'd estimate from this photograph, and  
24 knowing the size of the sample tag which is next

1 to it, I believe that that sample tag is approxi-  
2 mately six inches long, that there appears to be  
3 maybe a foot and a half of dry material in the Lexon  
4 Tube.

5 Q Thank you.

6 Off the record for a second.

7 (Discussion was had off the  
8 record.)

9 MR. SCHILLAWSKI: Back on the record.

10 BY MR. SCHILLAWSKI:

11 Q Ms. McCord, I am handing you Exhibits 46  
12 and 47 again. I will ask the question of whether  
13 the level that you are pointing to on the side of  
14 the truck represents closer to one half of the  
15 vertical distance of the truck or three-quarters?

16 The reason I am asking that is that  
17 at page 174 in your -- 194 in your earlier deposition  
18 you indicated in answer to my question:

19 "Question. What was the level of  
20 material in the tank truck at the time that you took  
21 the sample?"

22 Your answer was:

23 "Answer. I'd have to look at the photograph  
24 to refresh my memory, approximately a little over half

1 full."

2 A I stand by that answer. It appears to be  
3 a little over half full.

4 Q Closer to a little over half than to  
5 three-quarters?

6 A Can you define "a little over half"?

7 Q I'm using your words, "approximately a  
8 little over half full" were your words.

9 A I stand by that answer.

10 Q Okay.

11 A Can I clarify that?

12 It appears from the photograph it is  
13 somewhere between one-half to three-quarters full.

14 Q Okay. Ms. McCord, I need to go back to  
15 your earlier deposition transcript starting at the  
16 bottom line on page 123.

17 In answer to my question:

18 "Question. Did you recommend action  
19 against American Steel Foundries while you were an  
20 Ohio EPA employee?"

21 You answered:

22 "Answer. To whom?"

23 My follow-up question was:

24 "Question. To your superiors."

1                   Your answer was:

2                   "Answer. What action? We did issue the  
3 notice of violation."

4                   My question:

5                   "Question. Did you ever recommend any  
6 further action against American Steel Foundries?"

7                   Your answer was:

8                   "Answer. I did not recommend, no."

9                   In the corrections to that particular  
10 line, which was line 9 on page 124, you indicated  
11 to replace the entire line with "Yes."

12                   What further action did you recommend  
13 to your superiors at Ohio EPA that they take with  
14 respect to American Steel Foundries beyond that  
15 actually taken by Ohio EPA?

16                   A     The reason I clarified that question is  
17 that the inspection letters themselves indicated  
18 recommendation for further enforcement action.

19                   Q     So you did make a recommendation to your  
20 superiors for further enforcement action?

21                   A     Indirectly, right, because I was noting  
22 numerous violations in the inspection reports.

23                   Q     Once the Ohio EPA had made a decision not  
24 to take any further action beyond the notice of

1 violation, did you again recommend any further  
2 action?

3 MS. SUTULA: Objection.

4 MR. CLARIZIO: Objection.

5 MS. SUTULA: When did Ohio decide that?  
6 Do you have something that said Ohio decided that?

7 MR. SCHILLAWSKI: The Ohio EPA clearly  
8 did not take any enforcement action beyond that.

9 MS. SUTULA: From your question, your  
10 question assumes that Ohio made a decision on a  
11 certain date not to take any further action. You  
12 are asking this witness about that. I would like  
13 a date that Ohio made that decision.

14 MR. SCHILLAWSKI: I will rephrase the  
15 question.

16 Q Were you ever notified by your superiors  
17 that Ohio EPA was not going to take any further  
18 action beyond the notice of violation?

19 A I was not.

20 Q Did you recommend to either your superiors  
21 in Ohio EPA or U.S. EPA that any other Amsted  
22 facilities be investigated under any program other  
23 than hazardous waste programs?

24 MS. SUTULA: Objection. Can you read that

1 question back, please?

2 (Said question was read back  
3 as requested.)

4 MS. SUTULA: Can you put a date and time  
5 on that?

6 Can you put a time period on that  
7 question?

8 BY MR. SCHILLAWSKI:

9 Q While you were employed by Ohio EPA, did  
10 you ever recommend to your superiors at Ohio EPA  
11 that they investigate any Amsted facilities under  
12 any non-hazardous waste programs?

13 A Can you identify the facilities?

14 Q Any other Amsted facilities than the  
15 Alliance Foundry or the Sebring Disposal Site?

16 A No.

17 MR. CLARIZIO: Objection, too vague.

18 MS. SUTULA: She already answered. The  
19 objection is on the record.

20 Go ahead.

21 BY MR. SCHILLAWSKI:

22 Q While you have been an employee of U.S. EPA,  
23 have you ever recommended to your facilities that  
24 either the Alliance Foundry, the Sebring Disposal Site,



1 or any other Amsted facilities be inspected under  
2 any non-RCRA program?

3 MS. SUTULA: Objection.

4 BY THE WITNESS:

5 A I believe you said, "to your facilities."  
6 Did you mean to say something else?

7 MR. SCHILLAWSKI: Can you read the question  
8 back, please?

9 (Said question was read back  
10 as requested.)

11 BY MR. SCHILLAWSKI:

12 Q Let me rephrase the question.

13 While you were employed by Ohio EPA,  
14 did you recommend to your superiors at Ohio EPA that  
15 they increase any enforcement or inspection activities  
16 other than the Alliance Foundry or the Sebring  
17 Disposal Site?

18 A No.

19 Q While you were an employee of U.S. EPA, did  
20 you ever recommend to your superiors that they  
21 increase any enforcement or inspection activities  
22 of any other Amsted facility other than the Alliance  
23 Foundry or Sebring Disposal Site?

24 A No.

1           Q     While you were an employee of Ohio EPA,  
2     how many times did you inspect or visit the Sebring  
3     Disposal Site?

4           MR. CLARIZIO:   Wasn't that asked before,  
5     Phil?

6           MR. SCHILLAWSKI:   I don't believe so.

7           MR. CLARIZIO:   I think it was.   I don't  
8     want to take the time to --

9           MS. SUTULA:   What is the relevance of this  
10    line of questioning?

11          MR. SCHILLAWSKI:   The relevance of this  
12    line of questioning is to try to tie down exactly  
13    how many times Ms. McCord observed the mixture of  
14    dust and slurry being dumped at the landfill.

15          MS. SUTULA:   Ask it.

16    BY MR. SCHILLAWSKI:

17          Q     Ms. McCord, do you recall exactly or a  
18    good estimate of how many times you observed a  
19    truckload of underflow slurry from the sand washer  
20    clarifier and EAF dust combination being dumped at  
21    the Sebring landfill?

22          A     Approximately seven.

23          Q     I know of one important follow-up question  
24    that I want to ask now.

1           Back when you were talking about your  
2 review of documents and the multiple mentions, I  
3 believe were your words, or Ms. Sutula's, of the  
4 grab sample protocols that were used in the August 6th  
5 and 7th sampling inspection.

6           Were any of those multiple mentions  
7 relating to the representativeness under the  
8 regulation of a grab type sample?

9           A     Not specifically.

10          Q     Thank you.

11                If I can take like five minutes to  
12 review things, I think I may be done.

13                       (Pause)

14           MR. SCHILLAWSKI: Ms. McCord, I just have  
15 a couple of more questions.

16          Q     Subsequent to the August 6th and 7th, 1986,  
17 sampling inspection, EPA arranged and conducted a  
18 sampling inspection of the Alliance Foundry and  
19 Sebring landfill, to be conducted by an outside  
20 contractor, is that correct?

21          A     Correct.

22          Q     Did you recommend that that subsequent  
23 inspection by a contractor be conducted?

24           MS. SUTULA: Objection. You may answer.

1 THE WITNESS: Could you repeat the  
2 question?

3 BY MR. SCHILLAWSKI:

4 Q Did you recommend that subsequent inspection  
5 be conducted by a contractor?

6 A No.

7 Q Did you recommend that there be a subsequent  
8 inspection?

9 A No.

10 Q Who did make the decision, if you know, --

11 MS. SUTULA: Objection.

12 MR. CLARIZIO: Objection.

13 BY MR. SCHILLAWSKI:

14 (Continuing) -- to conduct the subsequent  
15 inspection using the contractor?

16 MS. SUTULA: Hold it.

17 Read that question back.

18 (Said question was read back  
19 as requested.)

20 MS. SUTULA: I will withdraw the objection  
21 to that question. You may answer who or what.

22 BY THE WITNESS:

23 A Who made the decision to do the sampling  
24 or who made the decision to use the contractor?

1 MS. SUTULA: Answer just the question.

2 Read the question back.

3 (Said question was read back  
4 as requested.)

5 MS. SUTULA: If you can't answer it, just  
6 say you can't answer it.

7 BY THE WITNESS:

8 A There was no one person.

9 BY MR. SCHILLAWSKI:

10 Q Did you take part in any discussions  
11 regarding the potential to take a subsequent  
12 inspection?

13 A Could you repeat that question?

14 Q Did you take part in any discussions  
15 regarding the taking of a subsequent inspection?

16 A Subsequent to --

17 Q The August 6th and 7th, 1986, sampling?

18 A Yes.

19 Q What were the substances of those  
20 discussions?

21 MS. SUTULA: Objection. Ask who she had  
22 the discussion with first.

23 BY MR. SCHILLAWSKI:

24 Q Who did you have the discussion with?

1           A     Other members of the Waste Management  
2 Division and other U.S. EPA personnel.

3           Q     And what was the substance of those  
4 discussions?

5           MS. SUTULA: Wait a minute. Were any of  
6 those other people attorneys?

7           THE WITNESS: Yes.

8           MS. SUTULA: You have to say that in order  
9 for our objection to be valid.

10          THE WITNESS: I'm sorry. Legal counsel,  
11 U.S. EPA and U.S. EPA legal counsel, and other  
12 technical and enforcement personnel.

13 BY MR. SCHILLAWSKI:

14          Q     Did you have any discussions regarding  
15 the taking of a subsequent inspection where a legal  
16 counsel was not present?

17          MS. SUTULA: Objection. We would request  
18 that that question be read "or discussions taken at  
19 the direction of legal counsel."

20          MR. SCHILLAWSKI: I will rephrase it.

21          Q     Did you have any discussions regarding  
22 the taking of a subsequent sampling inspection  
23 subsequent to the August 6th and 7th, 1986, sampling  
24 inspection which were not undertaken at the direction

1 of legal counsel or at which legal counsel were not  
2 present?

3 A No.

4 Q All right. Thank you.

5 MS. SUTULA: Sorry, it is so -- Off the  
6 record.

7 (Discussion was had off the  
8 record.)

9 (Witness excused.)

10  
11 -----  
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18  
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20  
21  
22  
23  
24

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

VS

AMSTED INDUSTRIES, INC., d/b/a  
AMERICAN STEEL FOUNDRIES,

Defendant.

CIVIL ACTION C87-1284B  
JUDGE LAMBROS

I hereby certify that I have read the foregoing transcript of my deposition given on the 9th day of April, 1990, at the time and place aforesaid, and I do again subscribe and make oath that the same is a true, correct and complete transcript of my deposition given as aforesaid, with correction sheet(s).

\_\_\_\_\_ correction sheet(s) attached.

\_\_\_\_\_  
CATHERINE A. McCORD, Deponent

SUBSCRIBED AND SWORN TO  
before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 1990.

\_\_\_\_\_  
NOTARY PUBLIC



1 UNITED STATES OF AMERICA )  
2 NORTHERN DISTRICT OF ILLINOIS )  
3 EASTERN DIVISION )SS.  
4 STATE OF ILLINOIS )  
5 COUNTY OF COOK )

6 I, BERNARD LAKE, Certified Shorthand  
7 Reporter and Notary Public in and for the County of  
8 Cook and State of Illinois, do hereby certify that  
9 CATHERINE A. McCORD was first duly sworn to testify  
10 the whole truth and that the above deposition was  
11 recorded stenographically by me and was reduced to  
12 typewriting under my personal direction.

13 I further certify that the said  
14 deposition was taken at the time and place specified  
15 and that the taking of said deposition commenced on  
16 the 9th day of April, A.D. 1990, at the hour of  
17 nine o'clock a.m.

18 I further certify that after said  
19 testimony had been so transcribed, it was submitted  
20 to the witness for examination, together with a  
21 deponent signature page, to be read and signed by  
22 her.

23 I further certify that the taking of  
24 this deposition was pursuant to notice and there  
were present at the taking of this deposition  
counsel as hereinbefore set forth.

1 I further certify that I am not a  
2 relative or employee or attorney or counsel of any  
3 of the parties, nor a relative or employee of such  
4 attorney or counsel, nor financially interested  
5 directly or indirectly in this action.

6 IN WITNESS WHEREOF I have hereunto set  
7 my hand and affixed my notarial seal this 23rd day  
8 of April, A.D. 1990.

9 

10 BERNARD LAKE, CSR and Notary  
11 Public, Cook County, Illinois



Missing 92-104  
221-227

COPY

Exhibits (never rec'd)

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

United States of America, )  
 )  
Plaintiff; )  
 )  
vs. ) No. C87-1284A  
 )  
Amstead Industries, Inc., ) Judge Lambros  
DBA American Steel )  
Foundries, )  
 )  
Defendant. )

Deposition of CATHERINE A. McCORD, a Witness  
herein, taken by the Defendant upon adverse party  
examination before Joyce L. Polinsky, a Notary Public  
within and for the State of Ohio, at the offices of  
the United States Department of Justice, 1404 East  
Ninth Street, Cleveland, Ohio, commencing at 9:50 A.M.,  
Thursday, November 2, 1989, pursuant to notice and  
stipulations of counsel.

~ 200 giv in pit  
~ 240 other mtgs  
257 in the pit  
~ 266 unsecured  
- other fly subs  
indicated on  
pg 290

J. L. POLINSKY & ASSOCIATES  
SHORTHAND AND STENOGRAPHY REPORTERS  
528 CITIZENS BUILDING • CLEVELAND, OHIO 44114  
696-7963

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14	A one-page 'United States Environmental Protection Agency Region V' memorandum to William Muno from Joseph J. Fredle, dated February 9, 1987; attached five-page 'American Steel Foundries, Alliance, Ohio, RCRA Sampling Inspection' report	197
15 thru 42	Numerous photographs	240
43	A photocopy of a photograph	240
44	A photocopy of a photograph	240
45	A voluminous document captioned 'Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846, Second Edition'	281

## 1 APPEARANCES:

2 U.S. Department of Justice, by  
3 Ms. Kathleen Ann Sutula

4 and

5 Mr. Richard Clarizio,

6 USEPA

7 On behalf of the Plaintiff;

8 Squire, Sanders &amp; Dempsey, by

9 Mr. Philip C. Schillawski

10 and

11 Mr. Van Carson,

12 On behalf of the Defendant.

13 - - - -

14 CATHERINE A. McCORD, of lawful age, a  
15 Witness herein, called by the Defendant for  
16 the purpose of adverse party examination, as  
17 provided by the Ohio Rules of Civil Procedure  
18 for the District Courts of the United States,  
19 being by me first duly sworn, as hereinafter  
20 certified, deposed and said as follows:

21 - - - -

22 EXAMINATION OF CATHERINE A. McCORD

23 BY MR. SCHILLAWSKI:

24 Q. Mrs. McCord, my name is Philip Schillawski.

25 I'm an attorney with Squire, Sanders and  
Dempsey, representing American Steel Foundries  
in the litigation which the United States has  
brought and which we're here in reference to.

I'm going to need to ask you several

1 questions and I want to make sure you  
2 understand the questions that I'm asking, so  
3 if there is any time that you don't  
4 understand, please let me know and I'll try to  
5 rephrase or explain the question a little more  
6 fully.

7 A. Fine.

8 Q. Would you please state your full name for the  
9 record?

10 A. Catherine Ann McCord.

11 Q. And what is your business address?

12 A. 230 South Dearborn, Chicago, Illinois, 60604.

13 Q. By whom are you employed?

14 A. The United States Environmental Protection  
15 Agency.

16 Q. The notice requests that you bring certain  
17 documents with you to this deposition. Do you  
18 have any of those documents with you?

19 MS. SUTULA: No, and I checked  
20 that out with my co-counsel, Kurt Weissmuller,  
21 who, number one, did not recall that this was  
22 a production of documents. I guess the notice  
23 was filed in August, and that was not -- his  
24 memory is not refreshed on that.

25 Secondly, all of the documents we

1 produced thus far, which I understand are very  
2 voluminous in this case, were mainly from Mrs.  
3 McCord's files, and it is the belief of  
4 counsel that all of her documents which have  
5 been produced, which would normally respond to  
6 that subpoena, have been produced.

7 If there are documents that you  
8 feel -- or, areas of documents that you feel  
9 we did not produce, we would like to be told  
10 what those are. The documents are over three  
11 drawers full of documents and we would search  
12 the files for anything you think you're  
13 missing.

14 Number two, if you'd want to go  
15 through the documents to satisfy yourself that  
16 none are missing, then that can be done, but  
17 it will have to be done in Chicago. We'll not  
18 reproduce them all, like yesterday with Mr.  
19 Fredle's file, there were only three documents  
20 out of two files that you requested and didn't  
21 know if you ever had them or not, so we would  
22 ask that if you know of something, please tell  
23 us and if you know of it today, we can maybe  
24 have it searched and express mailed to us, et  
25 cetera, something like that, but -- is that



1 acceptable, one of those alternatives?

2 MR. CARSON: Just so I  
3 understand, you will produce the documents in  
4 Chicago. We can review the files there?

5 THE WITNESS: Yes.

6 MR. CARSON: What are they, three  
7 file cabinets?

8 THE WITNESS: No, actually paper  
9 box sized. Some of that includes discovery  
10 materials you turned over to us, so I assume  
11 you wouldn't want to see those or have those,  
12 and also privileged documents, which in turn  
13 will be removed.

14 MS. SUTULA: We haven't sorted  
15 through them. We did pursuant to the  
16 production of documents request, but we did  
17 not maintain them in that same order. She has  
18 had working use of her files since then. So  
19 we would allow you to go through her files  
20 once we did categorize them and take out  
21 whatever would be privileged that might be in  
22 there now.

23 MR. CARSON: Fine.

24 MR. SCHILLAWSKI: Okay.

25 MS. SUTULA: But I do want to

1           emphasize that we believe you do have  
2           everything.

3   Q.    Do you keep a diary at all?

4   A.    No.

5   Q.    Do you keep a journal?

6   A.    No.

7   Q.    Do you keep any notes which would have any  
8           reference to American Steel Foundries, which  
9           would not be contained in your files?

10  A.    No.

11  Q.    Did you refer to any documents to refresh your  
12         recollection to prepare for this deposition?

13  A.    I did.

14  Q.    Are all of those documents contained in your  
15         files?

16  A.    Yes.

17  Q.    Who did you speak with to prepare for this  
18         deposition?

19  A.    Kathleen Sutula, Rich Clarizio, Kurt  
20         Weissmuller, Joe Fredle, William Muno,  
21         M-u-n-o.

22  Q.    Is Mr. Muno an attorney?

23  A.    He is not.

24  Q.    Did you speak with Mr. Muno at any time when  
25         an attorney was not present?

1 A. Yes.

2 Q. What was the substance of your conversation  
3 with him?

4 A. Preparation for the deposition.

5 Q. Would you please describe what you spoke with  
6 him about in preparation for the deposition?

7 A. General advice on how to prepare for a  
8 deposition. Nothing specific to the case.

9 Q. Who is Mr. Munoz?

10 A. He is chief of the RCRA enforcement branch for  
11 the United States Environmental Protection  
12 Agency, Region V office.

13 Q. When you spoke with Mr. Fredle, did you ever  
14 speak with Mr. Fredle when an attorney was not  
15 present?

16 A. Have I ever?

17 Q. In preparation for this deposition.

18 A. Oh, no.

19 Q. Where did you go to high school?

20 A. Shaker Heights High School.

21 Q. Were you in the college preparatory program  
22 there or some other program?

23 A. Normal advanced study program.

24 Q. Did you go to college?

25 A. I did.

1 Q. Where?

2 A. Miami University.

3 Q. What were your major and minor fields at  
4 Miami?

5 A. Zoology, mathematics, physics, for my  
6 undergraduate degree. ✓

7 Q. Did you attend any other colleges?

8 A. No other colleges.

9 Q. Did you attend any business or technical  
10 schools?

11 A. I attended graduate school at Miami  
12 University.

13 Q. What was your major field there?

14 A. Environmental science.

15 Q. During your undergraduate studies at Miami  
16 University, did you have any formal classes in  
17 chemistry or statistics?

18 A. Yes, both.

19 Q. Could you please describe what the classes in  
20 chemistry covered?

21 A. Organic and inorganic and physical chemistry.

22 Q. Would you please describe what the classes in  
23 statistics covered?

24 A. A general statistics, mathematics class.

25 Q. Did you have any courses in your undergraduate

1 college education which covered environmental  
2 law or regulations?

3 A. No.

4 Q. Did you have any courses in your post graduate  
5 education that dealt with chemistry?

6 A. Yes.

7 Q. What were the extent of those courses?

8 A. Environmental chemistry course that dealt  
9 with, again, physical, inorganic and organic  
10 chemistry.

11 Q. Did that course have any specific instruction  
12 regarding heavy metals?

13 A. They were included in the course. I'm unclear  
14 what your question is.

15 Q. What was the extent of your formal education  
16 in the environmental effects of heavy metals?

17 A. Environmental effects of heavy metals; I have  
18 had no formal education in the university  
19 setting regarding environmental effects of  
20 heavy metals. It's been a topic of courses  
21 that I have taken, but it was not a specific  
22 course in that.

23 Q. Has your coursework in -- I'm sorry -- post  
24 graduate education, covered statistics at all?

25 A. Yes.

1 Q. What was the extent of that coursework?

2 A. Environmental statistics and modeling course,  
3 dealt with many statistical and modeling  
4 methods that could be used in the  
5 environmental field.

6 Q. Was there any practical application of  
7 these --

8 A. It was a field -- there was a field course  
9 that included application of environmental  
10 statistics.

11 Q. What were those applications?

12 A. Use of applications in experimental  
13 situations.

14 Q. Did you have any post graduate coursework in  
15 environmental law or regulations?

16 A. Yes, both.

17 Q. What was the extent of that coursework?

18 A. I have taken both environmental regulation --  
19 regulatory development courses and also  
20 environmental law courses.

21 Q. Did those environmental law courses include  
22 instruction in the Resource Conservation and  
23 and Recovery Act?

24 A. Yes.

25 Q. Instruction in the regulations under those?

1 A. Yes.

2 Q. Do you have a post graduate degree?

3 A. Yes.

4 Q. What is that degree?

5 A. Master's in environmental science.

6 Q. Since leaving your formal education, have you  
7 had any other classroom training in chemistry  
8 or statistics?

9 A. Yes.

10 Q. What was that?

11 A. Courses offered or paid for by the United  
12 States Environmental Protection Agency.

13 Q. What were those courses?

14 A. I was -- I have taken both chemistry and case  
15 courses that dealt with statistics and  
16 environmental applications.

17 Q. Did the chemistry courses that you took  
18 include coverage of the environmental effects  
19 of heavy metals?

20 A. That would be a topic that would be included  
21 in the courses I have taken, yes.

22 Q. Can you describe what the statistics courses  
23 included?

24 A. They weren't courses on statistics per se,  
25 they were rather a more broader environmental

1 course which included the application of  
2 statistics.

3 Q. What applications of statistics were covered  
4 in those courses?

5 A. Could you clarify your question?

6 Q. When you took your post -- technical courses  
7 after your post graduate education, that  
8 included statistics?

9 A. Right.

10 Q. You mentioned that it covered statistics in an  
11 environmental setting; is that correct?

12 A. Right.

13 Q. Can you describe what specific applications to  
14 the environment these statistics course  
15 covered?

16 A. Boy, statistics are used in a variety of  
17 aspects in environmental work, primarily  
18 groundwater monitoring, but statistics venture  
19 into many categories of environmental work and  
20 environmental courses that I have taken.

21 Q. ~~What of those categories were specifically~~  
22 covered in your environmental courses?

23 A. I have lost your question there. You mean --  
24 could you repeat that?

25 Q. What I'm trying to do is get a description of



1           what particular real world applications of  
2           statistics in the environmental sense --

3   A.     Okay.

4   Q.     -- you have had formal coursework on.

5   A.     I have had both -- I have had environmental  
6           statistics classes which the whole entire  
7           course in graduate school dealt with the  
8           application of statistics in the environmental  
9           field, and then I have had U.S. EPA either  
10          sponsored or classes that have been paid for,  
11          that include the application of statistics but  
12          weren't -- the title of the course was not  
13          environmental statistics.

14   Q.     You mentioned that one of the applications of  
15          those statistics was to groundwater  
16          monitoring.

17   A.     That's correct.

18   Q.     Were there any other specific areas within  
19          environmental regulation or science to which  
20          you had coursework in the application of  
21          statistics?

22   A.     Yes, I have dealt with it in terms of  
23          sampling.

24   Q.     Are there any other areas?

25   A.     There is statistics in air quality work. I

1 guess probably every aspect of environmental  
2 work at some point deals with statistics if  
3 you're dealing with modeling.

4 Q. Does the application of statistics to sampling  
5 deal with modeling?

6 A. It could. It could, it depends on the  
7 situation. Depends what you're trying to do.  
8 You can model contaminants.

9 Q. What was the extent of your coursework in  
10 statistics as applied to sampling?

11 A. In graduate school or post graduate?

12 Q. Both.

13 A. I have had classes that have dealt with -- in  
14 both situations with a topic.

15 Q. Were there any reference works or textbooks or  
16 other published materials that were used in  
17 these training courses?

18 A. Yes.

19 Q. Do you recall what those were?

20 A. Some, not the titles of them. I do recall, I  
21 think, the text in my graduate course was in  
22 environmental statistics. I'm not sure.

23 Q. Were any U.S. EPA publications on statistics  
24 as applied to environmental regulations used  
25 in any of these courses?

1 A. Or reference to, yes.

2 Q. Was SW-846 test methods for valuation of solid  
3 wastes one of these?

4 A. That was used in the courses I have taken?

5 Q. Yes.

6 A. Yes.

7 Q. How extensive was your use of SW-846?

8 A. I used that document routinely.

9 Q. Have you had any other on-the-job training?

10 A. Yes.

11 Q. Could you please describe what that training  
12 entails?

13 A. Safety training, field techniques,  
14 groundwater, I routinely attend training  
15 courses through my professional career.

16 Q. Could you describe what the training courses  
17 involving field techniques included?

18 A. Safety in the field, sampling apparatus,  
19 approaches to sampling design, collection of  
20 samples, chain of custody, those types of  
21 things.

22 Q. Did you use any U.S. EPA reference works  
23 during the field techniques training --

24 A. It's an EPA course, so -- it's EPA materials  
25 that are presented at the course.

1 Q. What materials were presented during this  
2 course?

3 A. The manual for the course.

4 Q. Is that course manual a standard U.S. EPA  
5 publication?

6 A. A standard -- I'm not sure I understand what  
7 you mean by a publication. It's not something  
8 that is published in the Federal Register.

9 Q. Is it something that is, you believe,  
10 established internally within the U.S. EPA  
11 that is used as a guidance document by the  
12 U.S. EPA?

13 A. I wouldn't call it a guidance document. I  
14 would call it a manual. EPA defines guidance  
15 documents as something very specific. I would  
16 call it a manual.

17 Q. Did your training include any requirement that  
18 your field techniques comport with the  
19 techniques in these manuals?

20 A. That require you to follow those techniques?

21 Q. Yes.

22 A. There's recommended approaches. Every  
23 sampling situation is different. It's a  
24 course to teach skills, it's not a course --  
25 there is no regulations on sampling.

1 Q. Have you had any other training regarding  
2 sampling techniques, other than --

3 A. Than EPA courses?

4 Q. Yes.

5 A. No.

6 Q. Did your EPA coursework involving sampling  
7 techniques include the use of SW-846 as a  
8 reference work?

9 A. I remember that the document was referred to  
10 in the course, yes.

11 Q. Was the document referred to as an  
12 authoritative source for sampling techniques?

13 A. I don't recall.

14 Q. Was the document referred to with respect to  
15 chain of custody techniques?

16 A. It's -- I would -- I don't -- I don't recall.

17 Q. Do you recall any document that was used as a  
18 guide or manual for chain of custody matters?

19 A. There -- that subject was covered as part of  
20 the course. The course manual dealt with  
21 that, as does SW-846.

22 Q. Do you recall what the course manual title  
23 was?

24 A. I take several courses a year, so you will  
25 have to be more specific.

1 Q. Could you give us a listing of the courses  
2 that you have taken that have involved  
3 sampling techniques, field techniques or chain  
4 of custody matters, and when you took them?

5 A. I may be able to reconstruct a partial list.  
6 I don't maintain such a list.

7 Q. Was the same manual used for each of these  
8 courses?

9 A. No.

10 Q. Were different manuals used for every course?

11 A. I would say yes. I wouldn't take the same  
12 class twice. I also teach a class that deals  
13 with those subjects.

14 Q. What manual do you use in that class?

15 A. The RCRA inspectors' training course manual.

16 Q. Do you use SW-846 at all in that class?

17 A. It is referenced, yes.

18 Q. Do you regard it as being an authoritative  
19 source for sampling and chain of custody  
20 matters and techniques --

21 MR. CLARIZIO: Objection. That  
22 is an opinion there.

23 Go ahead.

24 THE WITNESS: Shall I still  
25 answer?

1 MR. CLARIZIO: Yes, answer.

2 A. It is one of several guidances that EPA states  
3 and federal personnel use.

4 Q. Use it authoritatively?

5 A. Could you clarify what you mean by that?

6 Q. Are the procedures contained in SW-846 good  
7 science?

8 MR. CLARIZIO: Objection, that's  
9 her opinion.

10 You can answer.

11 A. I have no basis to make that judgment.

12 Q. Do you recommend that your students in this  
13 training course use SW-846 procedures?

14 A. I don't make such a recommendation either way.

15 Q. To your knowledge, does the U.S. Environmental  
16 Protection Agency have any recommendation  
17 about the use of SW-846 procedures?

18 A. It is their guidance document.

19 Q. To your knowledge, does U.S. EPA have any  
20 requirements for the use of SW-846 procedures?

21 A. Yes, they do.

22 Q. What are those requirements?

23 A. The regulations in several places reference  
24 SW-846.

25 Q. Does U.S. EPA require the use of SW-846

1 procedures in sampling?

2 A. I believe the regulations provide in all cases  
3 whether or not its analytical methods or  
4 sampling for application of SW-846, but does  
5 not require it for every situation.  
6 Alternatives are allowed to be proposed.

7 Q. Is there a process within U.S. EPA for the  
8 proposal for such alternatives?

9 A. For what specific regulation?

10 Q. For RCRA regulations.

11 A. What specific RCRA regulation?

12 Q. For sampling under RCRA.

13 A. I don't believe the regulations refer to any  
14 alternative.

15 Q. Is it U.S. EPA's position where RCRA sampling  
16 is concerned, SW-846 procedures are required  
17 to be used?

18 A. I don't believe I'm in a position to state  
19 U.S. EPA's position.

20 Q. What is your understanding of U.S. EPA's  
21 position on that?

22 A. I'm sorry?

23 Q. Whether SW-846 procedures are required to be  
24 used for sampling for RCRA purposes?

25 A. I think I already answered that question.



1 Alternatives are permissible depending on  
2 circumstances.

3 Q. Does the agency have any mechanism by which  
4 such alternatives are required to be approved  
5 before use?

6 A. Under the regulations?

7 Q. Okay, under the RCRA regulations, yes.

8 A. No.

9 Q. Does it have any guidance which requires  
10 approval of alternative methods before they  
11 are used?

12 A. Not without -- not to my knowledge, outside of  
13 SW-846 itself, other than specifically  
14 referenced in the regulations.

15 Q. Does the agency have any standard operating  
16 procedure which would require the approval of  
17 alternative methods before they are used?

18 A. For?

19 Q. For RCRA sampling.

20 A. For waste determinations or groundwater  
21 monitoring?

22 Q. For waste determinations.

23 A. There is no formal procedure. The regulations  
24 reference the guidance document.

25 Q. Is there any formal control which U.S. EPA has

1 over what alternative procedures may be used  
2 in a RCRA waste determination sampling?

3 A. Okay, knowledge can be used to make a waste  
4 determination. It doesn't have to be --

5 Q. Well, leaving out knowledge of the waste and  
6 looking at just sample taking, will the U.S.  
7 EPA accept a sample which is taken in  
8 accordance with SW-846 procedures?

9 A. Accept for what?

10 Q. For purposes of making a RCRA determination of  
11 that waste.

12 A. To determine whether or not it's a hazardous  
13 waste?

14 Q. Yes.

15 A. Yes.

16 Q. Will U.S. EPA accept other procedures than  
17 SW-846 procedures for taking samples?

18 A. That would be determined on a case by case  
19 basis.

20 Q. What mechanism is there for making that  
21 determination?

22 A. I know of no such formal mechanism. There may  
23 be circumstances, because of the waste stream,  
24 that extraordinary circumstances for sampling  
25 may be needed, maybe the waste has an

1 explosive nature, there may be physical  
2 constraints on the collection of samples that  
3 would require that.

4 Q. What was your first employment after leaving  
5 your -- well, first of all, did you have any  
6 employment between your undergraduate college  
7 and your graduate work?

8 A. Yes.

9 Q. What was that?

10 A. Just the normal summer job. It was only a  
11 summer in between.

12 Q. What was that job?

13 A. I managed a recreation swimming facility in --  
14 for Denver County.

15 Q. After you started your graduate training, did  
16 you have any employment either at the same  
17 time you were going to graduate school or in  
18 between?

19 A. In between --

20 Q. -- semesters, during summers?

21 A. I was both a research assistant and a graduate  
22 assistant.

23 Q. And what was the scope of your duties as a  
24 research assistant?

25 A. I worked on a grant through the Department of

1 Geography; it was under the State of Ohio.

2 Q. What was the scope of your duties as a  
3 graduate assistant?

4 A. I was an assistant in the Geography Department  
5 for geography courses; advising students,  
6 grading tests that type of thing.

7 Q. Was there any involvement in your job  
8 activities as a research or graduate assistant  
9 which involved environmental law?

10 A. Not in my graduate assistantships, no.

11 Q. After you finished your graduate education  
12 what was your first employment?

13 A. For the United States Environmental Protection  
14 Agency headquarters in Washington D.C.

15 Q. What was the position that you had with U.S.  
16 EPA headquarters?

17 A. I worked on the development of regulations  
18 under the Resource Conservation and Recovery  
19 Act and the Toxic Substance Control Act.

20 Q. When did you start this employment?

21 A. June 1980.

22 Q. What regulations were you involved with under  
23 the Resource Conservation and Recovery Act?

24 A. Land disposal regulations.

25 Q. Did that development of regulations involve

1 any application in chemistry?

2 A. Yes.

3 Q. Could you please describe what that  
4 application was?

5 A. Not specifically. Chemistry is just one --  
6 one subject that is dealt with in my job.

7 Q. Did that job position, developing the land  
8 disposal regulations, involve any use of  
9 statistics?

10 A. Yes.

11 Q. What was that involvement?

12 A. Doing calculations on liner permeabilities.

13 Q. Was there any other aspect that used  
14 statistics?

15 A. I'm sure. I would say yes, although I can't  
16 tell you specifically what they are.

17 Q. Did that position involve any element of  
18 sampling?

19 A. At that job?

20 Q. Yes.

21 A. No, not -- not -- well, I'd say yes.

22 Q. What was that?

23 A. It did not --

24 - - - -

25 (Thereupon, a discussion was had off

1 the record between Kathleen Ann Sutula and the  
2 Witness.)

3 - - - -

4 A. It did not involve the actual collection of  
5 samples.

6 Q. What did it involve that --

7 A. The regulations themselves reference sampling,  
8 so that was my involvement with sampling.

9 Q. Was part of your involvement to draft the  
10 regulations that dealt with sampling?

11 A. No.

12 Q. What was your job that involved sampling?

13 A. With sampling?

14 Q. Yes. Not necessarily on an applied level, but  
15 you have indicated that part of your work  
16 dealt with sampling.

17 A. No, I think -- I don't believe I said that.

18 Q. Was sampling ever dealt with by you in your  
19 position with U.S. EPA headquarters, in  
20 developing RCRA regulations?

21 A. As a subject or as physically doing sampling?

22 Q. As a subject.

23 A. Sampling is involved -- is involved with many  
24 aspects of the RCRA regulations, so I'm sure  
25 it's something I discussed with people.

1 Q. Did you have any specific duties regarding the  
2 adoption of sampling methods under the  
3 regulations?

4 A. No.

5 Q. How long were you in that position?

6 A. For approximately one year.

7 Q. What did you do after?

8 A. I worked for an environmental -- an *and*  
9 engineering consulting firm.

10 Q. What was that firm?

11 A. Rogers, Golden and Halpern.

12 Q. Where are they located?

13 A. Reston, Virginia.

14 Q. What position did you have with them?

15 A. I was an environmental scientist.

16 Q. What were the duties of that position?

17 A. Writing proposals, doing technical work,  
18 marketing.

19 Q. Did that involve any training in chemistry; in  
20 other words, did you take any training courses  
21 or were you provided with any training in  
22 chemistry while you were in that position?

23 A. I had taken classes that would have dealt with  
24 the topic of chemistry, yes. I would not  
25 call -- characterize them as chemistry

1 classes.

2 Q. What was the material that was covered in  
3 those classes?

4 A. I don't recall specifically.

5 Q. Did you have any training in that position  
6 which dealt with statistics?

7 A. Not specifically. I'm sure that some of the  
8 classes dealt with the topic of statistics.

9 Q. Did you have any training that dealt with RCRA  
10 in that position?

11 A. Yes.

12 Q. What was that training?

13 A. I don't recall the title of the course.

14 Q. Do you recall what the content of the course  
15 was?

16 A. It dealt with hazardous waste management.

17 Q. Did you have any training in that position  
18 involving sampling?

19 A. I believe that some of the courses that I had  
20 taken, classes that I had taken, dealt with  
21 sampling as a subject, but not as the overall  
22 title of the course.

23 Q. Were there practical applications of sampling  
24 techniques covered?

25 A. To the best of my knowledge, yes.



1 Q. Can you describe what the content of those  
2 applications were?

3 A. I cannot recall that.

4 Q. How long were you with this company?

5 A. Approximately three and a half years.

6 Q. And what did you do after you left this  
7 company?

8 A. I worked for the environ -- the Ohio  
9 Environmental Protection Agency.

10 Q. When did you start with Ohio EPA?

11 A. December 1984.

12 Q. Where were you employed by Ohio EPA?

13 A. The northeast district office in Twinsburg,  
14 Ohio.

15 Q. What position did you hold?

16 A. Environmental engineer.

17 Q. What were the duties of that position?

18 A. Responding to complaints, reviewing Part B  
19 applications, reviewing closure plans, doing  
20 RCRA compliance evaluations, doing groundwater  
21 inspections.

22 Q. Were there any other duties that you did in  
23 this position?

24 A. I completed preliminary assessments for  
25 Superfund status. *sites?*

1 Q. What was involved in your duties in RCRA  
2 compliance evaluations?

3 A. What -- could you be more specific?

4 Q. Could you describe what an RCRA compliance  
5 evaluation is?

6 A. It's an inspection to evaluate compliance with  
7 RCRA.

8 Q. How do you go about doing one of those  
9 inspections?

10 A. You review any files in the office, you talk  
11 to previous employees that have gone to the  
12 facility, you talk to employees in different  
13 divisions that have gone to the facilities,  
14 such as Air or Water, an Ohio EPA employee  
15 would talk with U.S. EPA to see if there had  
16 been any involvement on their part. You go to  
17 the facility and you complete the inspection.

18 Q. Did those inspections involve sampling at any  
19 time?

20 A. At any inspection I have ever done?

21 Q. While an employee with Ohio EPA.

22 A. Sampling can be a part and was a part of some  
23 of my compliance evaluation inspections.  
24 Sampling inspection is a specific type of  
25 inspection.

1 Q. Were you provided with any training while at  
2 Ohio EPA in statistics?

3 A. Statistics was a topic covered in some of the  
4 classes that I have taken.

5 Q. Was there any training at Ohio EPA that  
6 covered statistics as applied to sampling?

7 A. I believe, again, that was a topic of some of  
8 the training courses that I have taken.

9 Q. Who did you train under at Ohio EPA?

10 A. I took both courses sponsored by Ohio EPA and  
11 courses sponsored by the United States  
12 Environmental Protection Agency and courses at  
13 the University of Wisconsin in Madison.

14 Q. Who were you supervised by at Ohio EPA?

15 A. Immediate supervisor?

16 Q. Yes.

17 A. David Wertz, W-e-r-t-z.

18 Q. Was he your only supervisor while you were at  
19 Ohio EPA?

20 A. No.

21 Q. Who was another supervisor?

22 A. Gary Gifford.

23 Q. Was Mr. Wertz your supervisor first and then  
24 Mr. Gifford?

25 A. No, Gifford was first.

1 Q. Was there any other supervisor that you had at  
2 Ohio EPA besides Mr. Wertz and Mr. Gifford?

3 A. Immediate supervisor?

4 Q. Yes.

5 A. No.

6 Q. Did you ever supervise anyone at Ohio EPA?

7 A. No.

8 Q. How long did you work for Ohio EPA?

9 A. From December '84 till September '86.

10 Q. Where did you go after you left Ohio EPA?

11 A. The United States Environmental Protection  
12 Agency, Region V office in Chicago.

13 Q. What position did you have with U.S. EPA  
14 Region V?

15 A. The position I do have -- I'm an environmental  
16 scientist in the waste management division.

17 Q. Was that your entry position for this job?

18 A. Same job title, different position --  
19 different position -- different level.

20 Q. Who did you train under at U.S. EPA?

21 A. I have taken numerous training courses while  
22 employed by U.S. EPA.

23 Q. Who have your immediate supervisors been at  
24 U.S. EPA?

25 A. Immediate supervisor was formerly James

1           Brossman, B-r-o-s-s-m-a-n. My current  
2           supervisor is Kevin Pierard, P-i-e-r-a-r-d.

3   Q.   Did you ever have a supervisory capacity at  
4       U.S. EPA?

5   A.   No.

6   Q.   Have you had any experience with steel  
7       foundries in any of your employment?

8   A.   Yes.

9   Q.   Would you please describe what that experience  
10      has been?

11   A.   I have been to steel foundry facilities, or,  
12      foundries.

13   Q.   Which ones?

14   A.   American Steel Foundries, I have been to other  
15      facilities that have done foundry type work.

16   Q.   What facilities were those?

17   A.   I believe some of the GM facilities, I have  
18      been to do foundry type work, and the United  
19      States Department of Energy Feed Materials and  
20      Production Center in Fernald, Ohio does  
21      foundry type of work.

22   Q.   Where were the GM facilities located?

23   A.   You know, I'm going to change my answer on  
24      that. I don't believe those GM facilities  
25      did -- they were only some fabricating plants,

1           they weren't doing foundry work.

2       Q.     How many visits did you make to the Fernald  
3           foundry facility?

4       A.     I have been there approximately 40 times over  
5           the last three years.

6       Q.     How many visits have you made to American  
7           Steel Foundries?

8       A.     Which facility?

9       Q.     The Alliance, Ohio facility.

10      A.     Approximately ten.

11      Q.     How many visits have you made to the American  
12           Steel Foundry Sebring Township landfill?

13      A.     Approximately 15.

14      Q.     How many visits have -- what other American  
15           Steel Foundry facilities have you made visits  
16           to?

17      A.     None.

18      Q.     Have you made any visits to any other foundry  
19           landfill?

20      A.     Foundry landfills? I have been to landfills  
21           that have taken foundry wastes.

22      Q.     Have you been to any facilities that are  
23           solely used for foundry wastes?

24      A.     ~~No~~  
~~Yes~~, because we ~~we~~ these landfills take a  
25           broad spectrum of wastes.

1 Q. You may have misunderstood the question.

2 A. Would you repeat it, please?

3 Q. Have you been to any landfills which take  
4 wastes solely from foundry operations?

5 A. I have -- I believe I have been -- I have  
6 never been to a facility that takes  
7 facility -- takes wastes only from foundry  
8 operations.

9 Q. Does the American Steel Foundry landfill in  
10 Sebring, Ohio, take wastes solely from foundry  
11 operations?

12 A. I -- I don't know.

13 Q. What experience have you had with the steel  
14 industry?

15 A. I have inspected several steel facilities. I  
16 have -- I have been involved in enforcement  
17 actions against steel facilities.

18 Q. What steel facilities have you inspected?

19 A. LTV Steel facilities.

20 Q. Where were those located?

21 A. I have been to the Canton Works.

22 Q. Were there any other LTV Steel facilities that  
23 you --

24 A. I have not gone to other facilities.

25 Q. Does the Canton Works have any electric arc

1 furnace production?

2 A. Yes.

3 Q. Does it generate any baghouse dust from that  
4 production?

5 A. Yes.

6 Q. Has your inspection of the Canton Works  
7 involved inspection of the electric arc  
8 furnace baghouse dust aspects?

9 A. Yes.

10 Q. What was the extent of your investigations?

11 A. Could you be more specific?

12 Q. Were your investigations of the baghouse dust  
13 from the Canton Works electric arc furnaces  
14 limited solely to the generation of that dust?

15 A. No.

16 Q. What other aspects of that dust handling --

17 A. Storage and treatment and disposal.

18 Q. What type of treatment is used by the Canton  
19 Works?

20 A. Right now, I don't believe any.

21 Q. Was there any treatment used at the time of  
22 your inspections?

23 MS. SUTULA: Objection.

24 A. No.

25 MS. SUTULA: I'm just going to



1 object to the relevancy of this, but you may  
2 answer.

3 A. Not at the time I was physically at the  
4 facility, no, not at the time of the  
5 inspection.

6 Q. You mentioned that you were involved with  
7 enforcement actions against steel facilities.  
8 What facilities were those?

9 A. LTV Warren and LTV Canton.

10 Q. Did the enforcement at the LTV Warren facility  
11 involve any electric arc furnace --

12 A. Yes.

13 Q. -- issues?

14 What were those issues?

15 MS. SUTULA: Objection.

16 - - - -

17 (Thereupon, a discussion was had  
18 off the record between Kathleen Ann Sutula and  
19 the Witness.)

20 - - - -

21 MS. SUTULA: I'm going to object  
22 to any questions related to unresolved  
23 enforcement actions. I will go question by  
24 question in case you ask one that I won't  
25 object to.

1 THE WITNESS: Could I ask you a  
2 question?

3 MS. SUTULA: You want some  
4 advice?

5 THE WITNESS: Yes.

6 - - - -

7 (Thereupon, a discussion was had  
8 off the record between Kathleen Ann Sutula and  
9 the Witness.)

10 - - - -

11 Q. Have any of the enforcement actions that you  
12 were involved with with LTV Steel in Warren  
13 been resolved?

14 A. No, there are still some outstanding issues.

15 Q. Have the electric arc furnace issues been  
16 resolved?

17 A. No.

18 Q. Have any of the enforcement actions at LTV  
19 Youngstown --

20 A. Canton.

21 Q. -- or Canton been resolved?

22 A. There is a signed consent agreement.

23 Q. Does that consent agreement cover any electric  
24 arc furnace issues?

25 A. Yes.

1 Q. What was the enforcement action for those  
2 electric arc furnaces issues based on --

3 MS. SUTULA: Objection.

4 You may answer.

5 A. Closure and operating requirement violations.

6 Q. Was electric arc furnace baghouse dust  
7 involved in any of those issues?

8 A. Yes.

9 Q. How was it involved?

10 A. Some of the violations dealt with the arc  
11 furnace dust.

12 Q. What violations were those?

13 A. The storage and disposal of arc furnace dust.

14 Q. Going back to your experience with the Fernald  
15 facility, what type of foundry is present at  
16 Fernald?

17 A. Could you clarify what you mean by type of  
18 foundry?

19 Q. What material is produced by the foundry at  
20 Fernald?

21 A. They do a metal extraction and they produce  
22 metal billets there.

23 Q. What process is used in the metal extraction?

24 MS. SUTULA: Objection.

25 A. It's --

1 MS. SUTULA: Wait.

2 - - - -

3 (Thereupon, a discussion was had  
4 off the record between Kathleen Ann Sutula and  
5 the Witness.)

6 - - - -

7 (Thereupon, the last question was  
8 read back by the Notary.)

9 - - - -

10 MS. SUTULA: I'm going to  
11 object. She may answer this question.

12 A. It's an acid extraction.

13 Q. Is steel produced by this --

14 A. Steel, no.

15 Q. -- process?

16 A. No.

17 Q. Is any steel produced at the Fernald facility,  
18 to your knowledge?

19 A. No.

20 Q. Is any heat or electric related process used?

21 A. Yes.

22 Q. Is this a heat process?

23 A. Yes.

24 Q. Is it involving a melting operation of any  
25 kind?

1 A. Yes.

2 Q. But steel is not produced by it?

3 A. That's correct.

4 MS. SUTULA: Okay.

5 Q. Okay, it's time for document number one.

6 - - - -

7 (Thereupon, a two-page letter to C.R.  
8 Dixon, Jr. from Catherine A. McCord, dated  
9 April 19, 1985, was marked for the purpose of  
10 identification as Defendant's Exhibit 1.)

11 - - - -

12 Q. Mrs. McCord, I have handed you a document  
13 that's been marked as Defendant's Exhibit  
14 number one. Do you recognize this document?

15 A. Yes, I do.

16 Q. What is it?

17 A. It's a letter.

18 Q. What is the content of this letter?

19 A. It's a letter that deals with American Steel  
20 Foundries' two facilities.

21 Q. Did you send this letter to American Steel  
22 Foundries when you were an Ohio EPA employee?

23 A. The Ohio Environmental Protection Agency sent  
24 it.

25 Q. Did you prepare this letter?

1 A. I did.

2 Q. Could you please explain what the material at  
3 the top of the letter after the re means?

4 A. What it means?

5 Q. Yes.

6 A. What does "American Steel Foundries" mean?

7 Q. What is the purpose of putting this material  
8 after the re line in this letter?

9 A. To identify the letter.

10 Q. Is the material to identify the subject of the  
11 letter, the subject facility of the letter?

12 A. Subject facility.

13 Q. Would American Steel Foundries be the name of  
14 the subject facility?

15 A. Yes.

16 Q. Would the number that appears after it, be the  
17 identification number of the facility?

18 A. Yes.

19 Q. Is that a U.S. EPA identification number?

20 A. Yes.

21 Q. Would Stark County be where the facility is  
22 located?

23 A. Yes.

24 Q. And would generator be the type of facility  
25 that it is?

1 A. Yes.

2 Q. Would you please note the next to the last  
3 paragraph, the one that starts "On November  
4 19th," was the November 19, 1984 inspection of  
5 the American Steel Foundry facility your first  
6 inspection of American Steel Foundries?

7 MS. SUTULA: Objection.

8 You may answer.

9 A. I believe so, yes.

10 Q. Was this your first contact with American  
11 Steel Foundries?

12 MS. SUTULA: Objection.

13 You may answer.

14 A. It was one of the first.

15 Q. Do you recall what the first contact was?

16 A. It was either this inspection or a telephone  
17 call prior to the inspection.

18 Q. How long had you worked for Ohio EPA when you  
19 made this inspection in November of 1984?

20 A. Since the previous December.

21 Q. What was the purpose of this November 1984  
22 inspection?

23 A. To evaluate the facility's compliance with  
24 RCRA, R-C-R-A.

25 Q. Was there any other purpose?

1 A. No.

2 Q. If I can direct your attention to that  
3 paragraph, the second line indicates there may  
4 have been another purpose with reference to a  
5 Part A permit?

6 A. Yes.

7 Q. What was that purpose?

8 A. I see that purpose as being a subcategory of  
9 the overall purpose of evaluating the  
10 facility's compliance with hazardous waste  
11 regulations.

12 Q. What aspect of the inspection regarding the  
13 Part A permit was a subject of this  
14 inspection?

15 A. Could you restate that?

16 Q. The letter indicates that the inspection  
17 purpose was to verify American Steel  
18 Foundries' request for withdrawal of a Part A  
19 TSD permit?

20 A. That's correct.

21 Q. Could you explain why that was a purpose of  
22 the inspection?

23 MS. SUTULA: Objection.

24 A. I'm trying to think of a way to answer your  
25 question. Why was that a purpose of -- I



1 can't tell you why it was a purpose of that.

2 Q. Who requested that the inspection be done to  
3 verify the request for withdrawal of the Part  
4 A permit?

5 A. The U.S. Environmental Protection Agency did.

6 Q. Were you specifically asked by U.S. EPA to do  
7 this, or did this come down from one of your  
8 superiors?

9 A. U.S. EPA requested Ohio EPA to do it.

10 Q. Why did U.S. EPA request that you verify the  
11 request to withdraw the Part A permit?

12 MS. SUTULA: Objection. She  
13 didn't make the decision.

14 Q. Did you have any contact, or did any of the  
15 instructions given you by Ohio EPA indicate  
16 why U.S. EPA had requested that Ohio EPA  
17 verify the request?

18 MS. SUTULA: Objection.

19 You can answer.

20 A. I don't know.

21 - - - -

22 (Thereupon, a two-page letter to John  
23 Difloure from Catherine A. McCord, dated  
24 January 17, 1985; attached one-page Ohio EPA  
25 Inter-Office Communication to 'Distribution'

1 from Wayne S. Nichols, dated October 20, 1982,  
2 were marked for the purpose of identification  
3 as Defendant's Exhibit 2.)

4 - - - -

5 Q. Mrs. McCord, I'm handing you a document that's  
6 been marked as Defendant's Exhibit 2. Do you  
7 recognize this document?

8 A. I do.

9 Q. What is it?

10 A. It's a letter from the Ohio Environmental  
11 Protection Agency.

12 Q. Who is it to?

13 A. Mr. John Difloure, D-i-f-l-o-u-r-e.

14 Q. What is the substance of this document?

15 A. Deals with hazardous waste regulations as  
16 applied to the American Steel Foundries.

17 Q. Did you draft this document?

18 A. I did.

19 Q. What is the significance of the material after  
20 the re on this document?

21 A. Designates that the subject facility is  
22 American Steel Foundries and that is how the  
23 facility title is referenced in our records at  
24 the point of the letter.

25 Q. Did you use this material as an identification

1 for American Steel Foundries?

2 A. Did I write this?

3 Q. Yes.

4 A. I included that information from the file on  
5 this letter, yes.

6 Q. This letter references a January 8, 1985  
7 meeting with American Steel Foundries; --

8 A. Yes.

9 Q. -- is that correct?

10 A. Yes.

11 Q. Were there any other contacts that you had  
12 with American Steel Foundries subsequent to  
13 the November 1984 inspection, which was  
14 referenced in Exhibit 1, and the January 8,  
15 1985 meeting which is referenced in this  
16 document?

17 A. So prior to this?

18 Q. Yes.

19 A. I don't recall. I may have had some  
20 conversations.

21 Q. At the meeting referenced in this document,  
22 what did you express to American Steel  
23 Foundries --

24 A. I'd like to go back to the previous -- I would  
25 say yes, if he came in for a meeting, I

1           probably would have to talk with him to set up  
2           the meeting, tell him where to go, so my  
3           recollection is I probably would have had  
4           conversations with him.

5   Q.   Do you recollect any other substance of those  
6           conversations you would have had, besides the  
7           scheduling of this meeting?

8   A.   Yes, the -- I believe I probably would have  
9           talked about the sampling that has occurred  
10          and the waste analysis.

11   Q.   Do you recall what the substance of those  
12          issues would have been?

13   A.   Not specifically, no.

14   Q.   In this January 8, 1985 meeting, what did you  
15          express to American Steel Foundries regarding  
16          the application of hazardous waste regulations  
17          to American Steel Foundry waste?

18                   MS. SUTULA:   Objection.

19                   You may answer.

20   A.   Do you want me to read the letter?

21   Q.   Do you recall and does the letter refresh your  
22          recollection as to what your contacts would  
23          have been?

24                   MS. SUTULA:   Read the whole  
25          letter before you answer.

1 A. Could you restate your question?

2 Q. In the January 8, 1985 meeting --

3 A. Okay.

4 Q. -- what did you express to American Steel  
5 Foundries regarding the application of  
6 hazardous waste regulations to American Steel  
7 Foundries' wastes?

8 MS. SUTULA: Objection.

9 Go ahead.

10 A. If I can read the letter, it says "During this  
11 meeting, Ohio EPA requested that the following  
12 analysis be performed for some of the waste  
13 currently being generated and disposed of in  
14 the strip mine cut."

15 Q. You indicate in the letter that samples should  
16 be taken at the point where they are generated  
17 and collected, not at the disposal site?

18 A. That's correct, for the purpose of waste  
19 determinations.

20 Q. Were any samples requested to be taken by Ohio  
21 EPA at the disposal site?

22 A. I believe that's what the letter says, yes.

23 Q. So as you recall, this letter requested that  
24 samples be taken of materials at the disposal  
25 site as well as materials --

1 MS. SUTULA: Objection. The  
2 letter speaks for itself, and I don't believe  
3 that's what the witness indicated:

4 A. I can -- do you want me to read the letter  
5 again?

6 Q. If it would help refresh your recollection of  
7 what was discussed at the meeting.

8 A. I'm confused. What's your question?

9 Q. My question is are the samples that were  
10 requested of American Steel Foundries at the  
11 meeting to be taken only at the point where  
12 they are generated, or were they to be taken  
13 also at the disposal site?

14 A. The list indicates -- or, the letter indicates  
15 the samples should be taken at the point where  
16 they are generated and collected, not at the  
17 disposal site.

18 Q. Were there any other contacts which you had  
19 with American Steel Foundries between the  
20 meeting on January 8th, and the time this  
21 letter was sent?

22 A. I don't recall.

23 - - - -

24 (Thereupon, a two-page letter to John  
25 Difloure from Catherine A. McCord, dated

1 February 22, 1985; attached one-page Ohio EPA  
2 'Solid Waste Disposal Questionnaire,' were  
3 marked for the purpose of identification as  
4 Defendant's Exhibit 3.)

5 - - - -

6 Q. Mrs. McCord, I'm going to hand you a letter  
7 that's been marked as Defendant's Number 3.  
8 Do you recognize this document?

9 A. Yes.

10 Q. What is it?

11 A. It's a letter from the Ohio Environmental  
12 Protection Agency.

13 Q. Who is it to?

14 A. Mr. John Difloure.

15 Q. Did you draft this letter?

16 A. I drafted this letter, yes.

17 Q. Did you draft the re information on this  
18 letter as well?

19 A. Again, that information came from our files,  
20 from Ohio EPA files.

21 Q. Did you have any contacts with Ohio EPA --  
22 sorry, excuse me -- did you have any other  
23 contacts with American Steel Foundries between  
24 the time that Exhibit Number 2 was sent to the  
25 foundries and the split sampling effort which

1 is identified in this letter?

2 A. I don't recall.

3 Q. What samples were taken as part of the sets of  
4 samples which are mentioned in the second  
5 paragraph of this letter?

6 A. What samples were taken as part of the sets of  
7 samples?

8 Q. Yes.

9 A. Could you --

10 Q. The second paragraph indicates that four sets  
11 of samples were taken as part of a February  
12 12, 1985 sampling.

13 A. Okay.

14 Q. What samples made up those sets?

15 MS. SUTULA: Objection. The  
16 document states that. Do you want her to read  
17 the document into the record, or are you going  
18 to admit the document into the record?

19 MR. SCHILLAWSKI: We are going to  
20 admit the document into the record. The  
21 document indicates that sets of samples were  
22 taken. My question is --

23 MS. SUTULA: It tells what the  
24 sets are.

25 MR. SCHILLAWSKI: -- what



1 individual samples made up the sets. It's not  
2 clear that the things that are listed here are  
3 exactly what made up the samples.

4 MS. SUTULA: If you remember, if  
5 it's different from this letter, go ahead.

6 A. The letter indicates that more than one sample  
7 was collected from each of the four sets  
8 referenced here. I would --

9 Q. Was mixed electric arc furnace dust and sand  
10 washer slurry sampled as part of any of these  
11 sets?

12 MS. SUTULA: Objection.

13 A. Was mixed -- there was a sample taken at the  
14 landfill.

15 Q. Was that sample which was taken at the  
16 landfill taken of mixed electric arc furnace  
17 dust and sand/slurry?

18 MS. SUTULA: Objection.

19 A. I don't know. It was taken of material that  
20 was in the landfill.

21 Q. During the February 12, 1985 sampling  
22 inspection, did American Steel Foundries  
23 request that you take a sample of the electric  
24 arc furnace dust and sand/slurry mixture?

25 A. I do not recall that I was requested to do so.

1 Q. Did you have any other contacts with American  
2 Steel Foundries between the date of the  
3 sampling inspection and the date that this  
4 letter was sent?

5 A. I do not recall.

6 Q. If we can go back to Exhibit Number 1, at this  
7 meeting, according to the letter, the purpose  
8 was to continue discussions concerning the  
9 generation of wastes at American Steel  
10 Foundries; is that correct?

11 A. The letter says "The purpose of this meeting  
12 was to continue discussions concerning the  
13 generation of solid and hazardous waste at  
14 American Steel Foundries in Alliance and the  
15 disposal of the wastes at your company-owned  
16 disposal site in Mahoning County."

17 Q. At this meeting, was American Steel Foundries'  
18 position regarding the mixing of electric arc  
19 furnace dust and sand/slurry discussed?

20 A. Could you explain what the position is, so I  
21 know if it was discussed?

22 Q. Did American Steel Foundries, during this  
23 meeting, express to you any position which  
24 they held regarding the mixing of electric arc  
25 furnace dust and sand/slurry?

1 A. Such a position was communicated to me. I  
2 don't recall if it was at that meeting.

3 Q. When that position was communicated to you, do  
4 you recall what that position was?

5 A. Yes.

6 MS. SUTULA: Objection.

7 Q. What was that position?

8 A. For dust control.

9 Q. Was there any part of the position which  
10 related to whether or not the mixture of dust  
11 and sand/slurry was a hazardous waste?

12 A. Not at that time, no.

13 Q. In the last paragraph on the first page of  
14 Exhibit Number 1, there is a mention of some  
15 concern that this waste is listed in the  
16 Federal Register as K061. What was that  
17 concern?

18 A. Do you want me to read this portion?

19 Q. Do you recall what that concern was?

20 A. Yes.

21 Q. What was that concern?

22 A. The concern was that the material may be  
23 listed waste.

24 Q. Was U.S. EPA guidance, which is mentioned in  
25 this letter, that you were awaiting on this

1 issue, ever received?

2 A. Yes.

3 Q. What was that guidance?

4 A. The guidance dealt with whether or not the  
5 material would be considered listed versus  
6 characteristic waste.

7 Q. What was the conclusion regarding whether it  
8 would be considered listed as opposed to  
9 characteristic waste?

10 A. If the arc furnace dust was generated from the  
11 primary steel production, it was -- the waste  
12 was listed waste. If the arc furnace dust was  
13 generated from non primary steel production,  
14 it was only a characteristic waste if certain  
15 heavy metal concentrations were present in the  
16 waste.

17 Q. Was a determination made as to whether the  
18 waste from American Steel Foundries was from  
19 the primary production of steel or the non  
20 primary production of steel?

21 A. American Steel Foundries informed me that they  
22 only had secondary steel production at the  
23 facility.

24 Q. Are you -- do you have knowledge of any  
25 follow-up that was done on this issue --

1 MS. SUTULA: Objection.

2 A. Follow-up beyond what point? Beyond the  
3 conclusion I just gave you?

4 Q. Beyond American Steel Foundries having  
5 expressed to you that there was no primary  
6 production, was there any further  
7 investigation of what their production was?

8 MS. SUTULA: Objection.

9 A. By whom?

10 Q. By you or Ohio EPA, to your knowledge.

11 A. No, not on the subject of primary versus  
12 secondary steel production, to my knowledge.

13 Q. On the second page of Exhibit 1, there is a  
14 carbon copy list. Who is Kevin O'Grady?

15 A. An employee of Ohio EPA.

16 Q. What was his position?

17 A. He worked in the Division of Solid and  
18 Hazardous Waste Management in Ohio EPA central  
19 office.

20 Q. What were his duties in that position?

21 MS. SUTULA: Objection.

22 Only if you know.

23 A. He -- I believe he dealt with the tracking of  
24 enforcement actions by the Ohio EPA.

25 Q. Was Mr. O'Grady in a supervisory position at

1 this time?

2 A. I don't recall.

3 Q. Who is Ed Kitchen?

4 A. He is an employee of the Ohio Environmental  
5 Protection Agency.

6 Q. What is his position?

7 A. Currently or at the time of this?

8 Q. At the time.

9 A. I don't recall his job title.

10 Q. Do you recall whether he was in a supervisory  
11 position?

12 A. I believe he was.

13 Q. Was he in the central office?

14 A. Yes, as the letter indicates.

15 Q. What branch was he in?

16 A. The Division of Solid and Hazardous Waste  
17 Management.

18 Q. Who is Joe Speakman?

19 A. He was an employee for the Ohio Environmental  
20 Protection Agency.

21 Q. What was his position at the time this letter  
22 was written?

23 A. I don't recall his job title.

24 Q. Was he in a supervisory position?

25 A. I believe so.

1 Q. In what branch?

2 A. The Division of Solid and Hazardous Waste  
3 Management.

4 Q. Who was Ben Pfefferle?

5 A. He was an employee for the Ohio Environmental  
6 Protection Agency.

7 Q. What was his position at that time?

8 A. He was an attorney.

9 Q. Who is Steve, I believe it's Uecke, U-e-c-k-e?

10 A. As the letter indicates, he's with the  
11 Mahoning, or, was with the Mahoning County  
12 Health Department.

13 Q. What was his position at that time?

14 A. I don't know his job title.

15 Q. Who was Joe Dopler?

16 A. As the letter indicates, he's an employee of  
17 the Stark County Health Department.

18 Q. What was his position?

19 A. I don't recall his job title.

20 Q. Who is Ken Frase?

21 A. Frase, F-r-a-s-e, he was an employee with the  
22 Ohio Environmental Protection Agency.

23 Q. What was his position?

24 A. I don't know his job title.

25 Q. Was he in a supervisory position?

1 A. Not at the time.

2 Q. What was his branch?

3 A. He was in the Division of Water Quality  
4 Management and Assessment.

5 Q. If you can refer again to Exhibit Number 1, in  
6 the last paragraph on the first page of this  
7 letter it references a March 27, 1985  
8 meeting.

9 A. Okay.

10 Q. Was that meeting with American Steel  
11 Foundries?

12 A. Yes.

13 Q. What was discussed at that meeting?

14 A. The non compliance of the two facilities.

15 Q. What was the substance of those discussions?

16 A. Violations of the -- the violations of  
17 hazardous waste rules.

18 Q. What violations of hazardous waste rules were  
19 discussed?

20 A. I don't recall what specific rules.

21 Q. Are there any notes or minutes that were kept  
22 from that meeting?

23 A. There were many people attending that  
24 meeting. I would say yes, there were notes.

25 Q. Would Ohio EPA personnel have notes from that



1 meeting?

2 A. I would guess, yes.

3 Q. Is it the ordinary course for Ohio EPA people  
4 in their business to put notes that they would  
5 keep from meetings in the files?

6 MS. SUTULA: Objection.

7 A. I wouldn't know what Ohio EPA's policy is on  
8 that right now.

9 Q. Did you keep any notes at this meeting?

10 A. I most likely would take notes. That's my  
11 habit, to take notes at meetings.

12 Q. Would you have put those into the file?

13 A. That's what I would normally do, yes.

14 Q. Did you review this document, Number 1, in  
15 preparation for this deposition?

16 A. No, I did not.

17 Q. Did you review any notes from the March 27,  
18 1985 meeting in preparation --

19 A. No, I did not.

20 Q. Did you make any notes of the April 9, 1985  
21 meeting?

22 A. I would say yes, I did.

23 Q. Would you have put those notes into the file?

24 A. I would say yes.

25 Q. Where are those files?

1 A. They were Ohio EPA files.

2 Q. Who has custody of those files?

3 A. Ohio EPA.

4 Q. Did you take copies of those files with you  
5 when you went to U.S. EPA?

6 A. I have copies of materials from the file from  
7 Ohio EPA.

8 Q. Do those copies include the notes that you  
9 took at the meetings on April 9th and March  
10 27th?

11 A. I don't know.

12 Q. Did you --

13 A. There may not be notes from that meeting that  
14 are still in existence. Sometimes when the  
15 notes aren't very extensive or if I write a  
16 follow-up letter such as this, the details of  
17 the entire meeting, I may not have kept the  
18 notes.

19 Q. Is it the ordinary course of business in Ohio  
20 EPA to make memos detailing what was discussed  
21 at meetings?

22 MS. SUTULA: Objection.

23 A. You'd have to ask Ohio EPA about that.

24 Q. Was -- was it your normal course of practice  
25 as an employee at Ohio EPA to make such?

1 A. Depends on the situation.

2 Q. Did you make any notes for the April 9th  
3 meeting?

4 A. I don't believe so.

5 Q. Did you make any memos from the March 27th  
6 meeting?

7 A. I don't believe so.

8 Q. Did you visit Ohio EPA to review any files in  
9 preparation for this deposition?

10 A. No.

11 Q. Were there any pre-meetings of Ohio EPA  
12 personnel to prepare for the March 27, 1985  
13 meeting?

14 MS. SUTULA: Objection.

15 A. Any pre-meetings within Ohio EPA?

16 Q. Yes.

17 A. I don't recall any. Most likely there would  
18 have been some discussions. It could have  
19 been over the telephone.

20 Q. Would any notes have been made of any  
21 pre-meetings?

22 MS. SUTULA: Objection.

23 A. Again, any notes --

24 MS. SUTULA: Are you asking if  
25 she would have made any notes or anybody in

1 the world?

2 Q. Do you know of any notes that were made of any  
3 pre-meetings?

4 A. I don't know of any. I don't recall any.

5 Q. Were there any pre-meetings for the April 9,  
6 1985 meeting?

7 A. I would say there most likely was some kind of  
8 pre-meeting.

9 Q. Were you present at that pre-meeting?

10 A. If there was a meeting, I would have been  
11 present at that.

12 Q. Do you recall what was discussed at that  
13 meeting?

14 MS. SUTULA: Objection. She's  
15 not even sure if there was a meeting.

16 A. And I'm not sure if I would characterize it  
17 formally as a meeting. There may have been  
18 just discussions.

19 Q. Do you recall any discussions?

20 A. I don't specifically recall. That would have  
21 been normal practice, to have had some  
22 discussions prior to a meeting.

23 Q. Would it have been your normal practice to  
24 make notes at such discussions?

25 A. It depends on the situation. It would vary.

1 Q. If you did take notes, would it have been your  
2 normal practice to put them in the file?

3 MS. SUTULA: Objection.

4 A. Yes.

5 Q. Do you recall whether you made copies of any  
6 such notes and took them with you when you  
7 went to U.S. EPA?

8 A. Of notes, I don't recall.

9 Q. If the notes were not taken with you, would  
10 they still be in Ohio EPA files?

11 MS. SUTULA: Objection.

12 A. I don't know. I don't work for Ohio EPA  
13 anymore.

14 Q. Do you know Bill Skowronski?

15 A. I do.

16 Q. What was his position during your tenure at  
17 Ohio EPA?

18 A. He was chief of the solid and hazardous waste  
19 section.

20 Q. Did you have any discussions with Mr.  
21 Skowronski regarding American Steel Foundries?

22 A. Yes.

23 Q. What was the substance of those discussions?

24 MS. SUTULA: Objection. Can we  
25 have some time?

1 MR. SCHILLAWSKI: Sure.

2 - - - -

3 (Thereupon, a discussion was had off the  
4 record between Kathleen Sutula and the  
5 Witness.)

6 - - - -

7 Q. When was your first discussion that you  
8 remember with Mr. Skowronski?

9 A. Sometime after the initial inspection.

10 Q. What date would that have been?

11 A. I don't recall.

12 Q. What was the substance of that first  
13 discussion you had?

14 MS. SUTULA: Object to this whole  
15 line of questioning on relevancy.

16 Go ahead.

17 A. I can only speculate. It would be the  
18 regulatory status and the violations found at  
19 the facilities.

20 Q. Did Mr. Skowronski express to you his view of  
21 American Steel Foundries' compliance?

22 A. I don't recall.

23 MS. SUTULA: Objection.

24 Q. Did you express to Mr. Skowronski your view of  
25 the compliance?

1 A. Yes.

2 Q. What was that view?

3 A. The facility was in violation of the  
4 applicable hazardous waste regulations.

5 Q. What were those violations, in your view?

6 MS. SUTULA: Objection.

7 A. What specifically?

8 Q. Yes.

9 A. I would need the inspection reports to give  
10 you every violation.

11 Q. Were the inspection reports prepared by you?

12 A. Not all inspection reports have been prepared  
13 by me.

14 Q. Was it the normal practice of Ohio EPA during  
15 your tenure there to put all inspection  
16 reports that were prepared in the files?

17 A. Yes.

18 Q. Did you make copies of any inspection reports  
19 that were conducted at -- by Ohio EPA and take  
20 them with you when you went to U.S. EPA?

21 A. Did I personally photocopy them?

22 Q. Yes.

23 A. I did not personally photocopy them.

24 Q. Do you have copies of inspection reports  
25 from --

1 A. Yes, I do.

2 Q. Are they in your files?

3 A. Yes.

4 Q. Did the copies of Ohio EPA inspection reports  
5 which you have in your files include only  
6 those inspection reports which you produced?

7 A. No. Ohio EPA routinely forwards inspection  
8 reports on certain types of facilities to the  
9 Region V office.

10 Q. If we can go back to Exhibit 2, are there any  
11 notes which you kept of the January 8, 1985  
12 meeting?

13 A. I don't recall. I think I answered that  
14 question already, didn't I?

15 Q. I believe we were discussing only April 9th  
16 and March 27th.

17 A. Okay, I don't recall.

18 Q. Was there any pre-meeting among Ohio EPA  
19 personnel to prepare for the January 8th  
20 meeting?

21 A. I don't recall specifically a meeting. There  
22 may -- most likely there were discussions.

23 Q. Did you make any notes of those discussions?

24 A. I don't recall.

25 Q. Do you know if there are notes or any other



1 documents which reflect the pre-discussions to  
2 the January 8th meeting, if there were any?

3 A. I don't recall. I would say most likely not,  
4 pre-discussions.

5 Q. Do you recall any notes or any other documents  
6 which were prepared for the January 8, 1985  
7 meeting?

8 A. By myself?

9 Q. Yes.

10 A. Prepared for the meeting?

11 Q. Prepared, describing the discussions which  
12 were held at the meeting.

13 A. Other than this letter?

14 Q. Yes.

15 A. Not that I recall.

16 Q. Do you recall any other person having prepared  
17 any notes or other documents?

18 A. Not to my knowledge.

19 Q. If we can go to Exhibit 3, did you prepare any  
20 notes with reference to the February 12, 1985  
21 sampling?

22 A. It is my normal practice to take notes during  
23 a sample inspection.

24 Q. Is it your normal practice to put those notes  
25 in the file?

1 A. Yes, it is.

2 Q. Did you make copies of those notes -- excuse  
3 me -- did you take copies of those notes with  
4 you to U.S. EPA?

5 A. I'm not sure if there are notes in the file.  
6 I did not take them because I went to U.S.  
7 EPA. That's not the reason I would have had  
8 copies of the documents.

9 Q. In the February 12, 1985 split sampling visit,  
10 isn't it true that American Steel Foundries'  
11 personnel requested that you take samples of  
12 the mixture of electric arc furnace dust and  
13 sand/slurry after the material had been taken  
14 to Sebring and was in the process of being  
15 disposed of?

16 MS. SUTULA: Objection.

17 A. I believe I was requested to do so.

18 Q. Did you take samples of that material?

19 A. I don't believe I did, as the letter reflects.

20 Q. Did you have any discussions prior to the  
21 split sampling inspection on February 12, 1985  
22 to prepare for that discussion -- that  
23 inspection?

24 A. Discussions with American Steel Foundries?

25 Q. Ohio EPA people.

1 A. I'm sure there were discussions.

2 Q. Did you make any notes of those discussions?

3 A. Not that I recall.

4 Q. Do you recall whether anyone else made any  
5 notes of those discussions?

6 A. Some of my discussions may have been over the  
7 telephone. I would not know if notes were  
8 made.

9 Q. Do you know whether there was any formal  
10 sampling protocol which was prepared for this  
11 February 12, 1985 sampling?

12 A. Prepare a sampling protocol?

13 Q. Yes.

14 A. Those documents are prepared -- are included  
15 in such documents such as SW-846 or state  
16 sampling guidances.

17 Q. Was there any specific sampling protocol made  
18 up for the February 12, 1985 --

19 A. Sampling protocols are not made up for each  
20 sampling event.

21 Q. Was there any specific sampling plan which was  
22 made up?

23 A. No.

24 Q. Was there any --

25 A. A written document?

1 Q. Yes.

2 A. No, not that I recall.

3 Q. Was there any non SW-846 protocol which was  
4 developed for the February 12, 1985 sampling?

5 A. Not to my knowledge.

6 Q. Do you recall how the sampling of spent  
7 foundry sands were taken during the February  
8 12, 1985 samples?

9 A. How they were taken?

10 Q. Yes.

11 A. Could you --

12 Q. What methods was used to take the samples?

13 A. Material was collected and placed in a glass  
14 jar.

15 Q. How was it determined what material would be  
16 collected for those samples?

17 A. The facility indicated that a certain material  
18 was foundry sand and I collected a grab sample  
19 of the material.

20 Q. How did you determine where that grab sample  
21 would be collected from ~~from~~ the mass of  
22 material?

23 A. Based on American Steel Foundries' direction  
24 of what material was indicated to be foundry  
25 sand.

1 Q. Was the material which was indicated to be  
2 foundry sand a large mass of material?

3 A. I recall that it was --

4 MS. SUTULA: Objection.

5 A. I recall that it was actually -- there is  
6 foundry sand over a large part of the  
7 facility.

8 Q. For clarification, you're talking about the  
9 production facility or the disposal facility?  
10 Well, first let's explore that a little bit.  
11 Did you take samples of spent foundry sand at  
12 the production facility?

13 A. That's my recollection, yes.

14 Q. Was that material that you took the sample  
15 from, a large mass of material?

16 A. I'd say it's a large -- material was spread  
17 over a large area. Material's all over the  
18 floor of the foundry.

19 Q. How did you determine where from that area to  
20 take your sample?

21 A. The indication from American Steel Foundries,  
22 as I previously stated.

23 Q. What mechanism did you use to take the sample  
24 a baghouse dust on the February 12, 1985  
25 sampling?

1 A. Could you explain to me what you mean by  
2 "mechanism"?

3 Q. What method of taking the sample did you use?

4 A. How it was collected?

5 Q. Yes.

6 A. Oh, I climbed on top -- I believe I climbed on  
7 top of the truck and collected the sample of  
8 the waste as it exited the baghouse.

9 Q. How did you determine at what point to  
10 collect -- let's get a little background. How  
11 does the waste physically exit the baghouse at  
12 American Steel Foundries?

13 A. Through an opening at the bottom of the  
14 baghouse.

15 Q. Does it all come out at one time --

16 MR. CLARIZIO: Objection.

17 Q. -- or does it come out over a period of time?

18 MR. CLARIZIO: Nothing could be  
19 instantaneous.

20 Q. How did you determine when over the period of  
21 time to take the sample that you took?

22 MS. SUTULA: Again, I'm going to  
23 renew an objection to all questions relative  
24 to the inspection done during Mrs. McCord's  
25 employment as an Ohio EPA employee, but you

1 may answer.

2 MR. SCHILLAWSKI: Why is that?

3 MS. SUTULA: Because I don't  
4 think they are relevant, but you may answer.

5 MR. SCHILLAWSKI: The Complaint  
6 contains a count or a paragraph which  
7 indicates that inspections were conducted at  
8 ASF Alliance and Sebring facilities by the  
9 Ohio Environmental Protection Agency as the  
10 authorized representative of EPA on November  
11 18, 1984, February 12, 1985 and August 12,  
12 1985.

13 Q. Did you take any samples of baghouse dust at  
14 the Sebring landfill?

15 A. Did I ever?

16 Q. On the February 12, 1985 inspection, did you  
17 take any samples of baghouse dust at the  
18 Sebring landfill?

19 A. I took a sample of material at the landfill.  
20 I don't know -- I don't believe it was just  
21 arc furnace dust.

22 Q. Did you take any samples of spent foundry  
23 sands at Sebring beyond --

24 A. Same response, I collected one sample of  
25 material that was in the landfill. I have no

1 way of knowing where that material came from  
2 or who placed it there.

3 Q. How did you take a sample of air pollution  
4 control sludge at American Steel Foundries on  
5 February 12, 1985?

6 A. I don't believe I did take a sample of air  
7 pollution control sludge.

8 Q. Could you describe what the sample is that is  
9 referred to in the second paragraph of Exhibit  
10 3, which starts out with "air pollution  
11 control sludge"?

12 A. The sample that I collected was the sludge  
13 from the tank that is referred to as the sand  
14 washer sludge. There may be -- American Steel  
15 Foundries may be placing air pollution control  
16 sludge into that unit.

17 Q. How did you take this sample?

18 A. How did I collect it?

19 Q. Yes.

20 A. I stuck the jar at the end of the entrance  
21 pipe that fills that tank and took a grab  
22 sample.

23 Q. Is this entrance pipe that fills the tank  
24 continually discharging material?

25 A. No.



1 Q. What is the -- from your observations, the  
2 manner in which this discharge pipe fills the  
3 tank?

4 A. Periodically.

5 Q. How did you determine when on this periodic  
6 filling process to take your grab sample?

7 A. I was told by plant personnel that the  
8 material will be -- is being transferred over  
9 to this tank, and I stood at the end of the  
10 discharge pipe and waited for the material to  
11 fill the quart jar that I was holding.

12 Q. Was this quart jar taken from the first part  
13 of the material that came out of the pipe?

14 A. First part?

15 Q. You indicated that the --

16 A. I don't recall. There was material that  
17 was -- I recall that the jar overflowed and  
18 that it covered my hand and arm.

19 Q. Did you take any samples of what is referred  
20 to in the letter as air pollution control  
21 sludge and sand washer sludge at the Sebring  
22 landfill on February 12th?

23 A. At the landfill?

24 Q. Yes.

25 A. The one sample that we previously discussed.

1 Again, I told you I took one grab sample from  
2 the landfill. I have no way of knowing who or  
3 what -- who placed that material there or what  
4 the material is. There was no controlled  
5 access to that area.

6 Q. How did you determine where you would take the  
7 grab sample at the landfill?

8 A. I picked a location where it was safe for me  
9 to go down into the landfill area, which was  
10 an open pit.

11 Q. Was there any mechanism or protocol that you  
12 used to determine what place to take that  
13 sample, other than safety considerations?

14 A. I picked material that looked like it had been  
15 there for quite a while. It was older looking  
16 material.

17 - - - -

18 (Thereupon, a one-page letter to C.R.  
19 Dixon, Jr. from Catherine A. McCord, dated  
20 July 17, 1985, was marked for the purpose of  
21 identification as Defendant's Exhibit 4.)

22 - - - -

23 Q. Mrs. McCord, I have handed you a letter which  
24 has been marked as Defendant's Number 4. Can  
25 you identify this?

1 A. This is a letter sent by the Ohio  
2 Environmental Protection Agency.

3 Q. To whom?

4 A. To Mr. C.R. Dixon, Junior.

5 Q. Does this letter deal with American Steel  
6 Foundries?

7 A. Yes.

8 Q. Did you prepare this letter?

9 A. I did.

10 - - - -

11 (Thereupon, a five-page letter to  
12 C.R. Dixon, Jr. from Catherine A. McCord,  
13 undated, was marked for the purpose of  
14 identification as Defendant's Exhibit 5.)

15 - - - -

16 Q. I have handed you a document that has been  
17 marked as Defendant's Number 5. Can you  
18 identify this?

19 A. It's a letter from the Ohio Environmental  
20 Protection Agency.

21 Q. Who is it to?

22 A. The letter is addressed to Mr. C.R. Dixon,  
23 Junior.

24 Q. Again, at American Steel Foundries?

25 A. Yes.

1 Q. Did you draft this letter?

2 A. I did.

3 Q. Is there a date on the letter which is

4 Defendant's Number 5?

5 A. There is a date 7-11-85, received at Alliance  
6 Works.

7 Q. Is there a date which reflects when the letter  
8 was drafted?

9 A. On this letter?

10 Q. Yes.

11 A. No. It was sent certified mail.

12 Q. If you can refer back to Exhibit Number 4.

13 A. Yes.

14 Q. What is the subject of Exhibit Number 4?

15 A. The subject of Exhibit Number 4 is Exhibit  
16 Number 5.

17 Q. Is it a correct statement that the date listed  
18 in Exhibit Number 4, July 17, 1985, is the  
19 date that should have appeared on Exhibit  
20 Number 5?

21 A. That is what Exhibit 4 indicates, yes.

22 Q. Could you please indicate what the meaning of  
23 the material following the re line on Exhibits  
24 4 and 5 is?

25 A. That is information used for tracking

1 facilities in files, for filing.

2 Q. Is that an identification of the facility?

3 A. Of the name of the facility, yes.

4 Q. There is a number which appears on the bottom  
5 paragraph under the re material on both  
6 Exhibit Number 4 and Number 5 which starts out  
7 "OHD."

8 A. Right.

9 Q. What is the significance of that number?

10 A. That is the United States Environmental  
11 Protection Agency's identification number.

12 Q. Could you compare that number on Exhibits 4  
13 and 5 to the number which is contained in the  
14 material after re on Exhibits 1 through 3?

15 A. The same number is listed.

16 Q. Isn't it true that in Exhibits 4 and 5, that  
17 number is listed in a paragraph which also  
18 includes the information Mahoning County and  
19 TSD?

20 A. That's correct -- on Exhibits 4 and 5?

21 Q. Yes.

22 A. Yes.

23 Q. Is it not true that on Exhibits 1 through 3  
24 that number appears in a paragraph containing  
25 the information "American Steel Foundries,

1 Stark County, Generator"?

2 A. Yes. The ID number does reflect the way the  
3 files were being maintained at the time.

4 Q. Is it not true, then, that you as an Ohio EPA  
5 employee used the same EPA identification  
6 number for both the Alliance foundry and  
7 Sebring landfill?

8 A. No.

9 Q. Does not the same identification number appear  
10 on Exhibits 1 through 3, documents which you  
11 prepared for the Alliance facility and Stark  
12 County?

13 A. Again, the re section of the letters indicate  
14 how the facility was being listed in our files  
15 at the time.

16 Q. Did you use this listing for the facilities in  
17 your files at the time as an Ohio EPA  
18 employee?

19 A. That was the only identification number in the  
20 files at that time.

21 Q. Did you use that identification number to  
22 refer to and track the American Steel  
23 Foundries' facility in Stark County as a  
24 generator?

25 A. No. Did I use it; no.

1 Q. When you drafted these letters which you have  
2 testified that the material on the re line is  
3 how you tracked the facilities and how you  
4 identified the facilities -- I believe I'm  
5 characterizing your testimony correctly -- did  
6 you use the identification number OHD  
7 017-497-587?

8 MS. SUTULA: I want to place an  
9 objection to the characterization. I believe  
10 her testimony is this is the number in the way  
11 Ohio EPA tracked their internal files, not how  
12 she personally as an employee identified her  
13 cases.

14 With that objection, you may  
15 answer the question.

16 A. The information at the top of these letters  
17 indicate how Ohio EPA was tracking that  
18 facility at the time in their files.

19 Q. Is it not true that Ohio EPA was using the  
20 same identification number in correspondence  
21 prepared by you to track both the Alliance  
22 foundry and the Sebring landfill?

23 A. I don't think that's a proper  
24 characterization. It was the only --

25 Q. What would be the proper characterization?

1 A. That there was only one identification number  
2 applied for at the time and that was the only  
3 number used at that point in time.

4 Q. Was that number used for both the Alliance  
5 foundry and Sebring landfill?

6 A. An identification number can only apply to one  
7 contiguous property.

8 Q. I'm not asking how it can apply. I'm asking  
9 how it was used by Ohio EPA.

10 A. It was not used in that manner, no.

11 Q. Referring to the first paragraph on page two  
12 of Exhibit 5 --

13 MS. SUTULA: Excuse me, this is a  
14 five page document. I would like the witness  
15 to have time to read the whole document before  
16 you question about specific parts.

17 MR. SCHILLAWSKI: Okay.

18 A. Okay. I'm done reading it.

19 Q. I need to back up here for one second. What  
20 is the substance of Number 5?

21 A. I'm sorry, substance of what?

22 Q. Can you summarize the substance of document  
23 Number 5?

24 A. It's a notice of violation.

25 Q. What would a notice of violation be used for



1 by Ohio EPA during the time you were employed  
2 there?

3 A. To notify a facility that they are in  
4 violation of applicable hazardous waste  
5 regulations.

6 Q. Referring to the first paragraph on page two  
7 of number five, were you aware of the American  
8 Steel Foundry practice of mixing electric arc  
9 furnace dust with clarifier slurry before you  
10 drafted this letter?

11 A. The letter includes information regarding the  
12 combining. I wouldn't call it mixing.

13 Q. I'm sorry, I misspoke somewhat.

14 Were you aware of the practice of the  
15 mixing that occurred with the EAF dust and  
16 clarifier slurry prior to your inspection of  
17 the facility which this letter refers to?

18 MS. SUTULA: Objection.

19 A. No, I am not aware of any active mixing that  
20 is done.

21 Q. What is your understanding of the process by  
22 which electric arc furnace dust and clarifier  
23 slurry are combined -- were combined?

24 A. I have been told by plant personnel and have  
25 seen a roll-off tanker truck that is

1            underneath the sludge tank be partially filled  
2            with the black thin slurry, then transported  
3            to underneath the baghouse which is at the  
4            other end of the facility. I was again told  
5            that this was done for dust control purposes,  
6            and then that truck that contains both the  
7            thin slurry and the fine arc furnace dust is  
8            transported to the landfill for disposal.

9    Q.    Did anyone from American Steel Foundries  
10          express to you any position regarding the  
11          hazardous or non hazardous nature of this  
12          combined electric arc furnace dust and sand  
13          washer slurry?

14    A.    At what time?

15    Q.    Prior to this notice of violation.

16    A.    No.

17    Q.    Did anyone from American Steel Foundries  
18          subsequently express a position to you?

19    A.    Yes.

20    Q.    What was that position?

21    A.    That they felt that the material was being  
22          treated and was rendered non hazardous.

23    Q.    Did they specifically use the word  
24          "treatment"?

25    A.    I believe so. At some point in time that word

1 was used either in written documents or  
2 orally. Actually, I believe it's in documents  
3 from your firm.

4 Q. Are you -- we can go through the documents  
5 when we get to them, but is it your  
6 recollection right now that that use of the  
7 word "treatment" was in a hypothetical  
8 situation or an even if situation or whether  
9 it was referred to specifically as treatment?

10 MS. SUTULA: Objection.

11 A. I don't recall.

12 Q. Are you familiar with the mixture rule for  
13 characteristic waste and hazardous waste  
14 regulations under RCRA?

15 MS. SUTULA: Objection.

16 A. That could be interpreted two ways. Could you  
17 explain what you --

18 Q. First, can you tell me what the two ways are  
19 that it could be interpreted?

20 MS. SUTULA: Objection.

21 Q. I'm missing something.

22 A. Are you talking about mixture of  
23 characteristics with a hazardous waste? I am  
24 familiar with that term. There are people who  
25 misuse that term in a regulatory sense.

1 Q. Are you familiar with the mixture rule as it  
2 applies to a mixture of two solid waste  
3 streams, one of which may be a hazardous waste  
4 by characteristics, the other which is not?

5 A. Yes, I am.

6 Q. Could you please describe what that rule is?

7 A. Well, the rule has -- the rule, the  
8 regulation, has to do with the mixture of  
9 solid waste, a non hazardous -- I'm sorry, non  
10 hazardous waste with a listed waste or  
11 characteristic waste, that's the mixture rule.

12 Q. Is there a separate rule which may in some  
13 instances be identified as a mixture rule  
14 which deals with mixing of a non listed  
15 characteristics waste with a solid waste?

16 A. I would not characterize that as the mixture  
17 rule as -- as EPA identifies it.

18 Q. Is there a rule which applies to the mixing of  
19 a non listed characteristics waste with a  
20 solid waste?

21 A. There are rules that deal with those  
22 situations, yes.

23 Q. Is there a rule which indicates whether or not  
24 the resultant material from that mixture is a  
25 hazardous waste or not?

1 A. There is a treatment regulation that deals  
2 with that, yes.

3 Q. What is the substance of that regulation?

4 A. That if a material is treated, if a waste  
5 material which had exhibited a characteristic  
6 of hazardous waste had been treated and no  
7 longer exhibits that characteristic of  
8 hazardous waste, that material may no longer  
9 be a hazardous waste.

10 Q. Has ASF ever expressed a position to you  
11 regarding the application of this last rule  
12 which you discussed to the electric arc  
13 furnace and dust/slurry mixture?

14 A. They have.

15 Q. What was that position?

16 A. Just as you stated.

17 Q. Do you have a personal opposition to this  
18 hazardous waste rule?

19 MS. SUTULA: Objection.

20 A. I do not.

21 Q. Isn't it true that you have expressed a  
22 personal opposition to this hazardous waste  
23 rule to American Steel Foundries or their  
24 attorneys in the past?

25 MS. SUTULA: Objection.

1 A. As being treatment?

2 Q. No, a personal opposition to the mixture rule  
3 as making what was a characteristic hazardous  
4 waste non hazardous.

5 A. I have no personal objection to that.

6 Q. Is it not true that in the past you have  
7 stated to American Steel Foundry attorneys  
8 that you did not believe in this rule?

9 MS. SUTULA: Objection.

10 A. That's not true.

11 MR. SCHILLAWSKI: We're at a  
12 convenient stopping point.

13 - - - -

14 (Thereupon, a luncheon recess was  
15 had.)

16 - - - -

17 (Thereupon, a four-page letter to  
18 C.R. Dixon, Jr. from Catherine A. McCord,  
19 dated April 25, 1984, was marked for the  
20 purpose of identification as Defendant's  
21 Exhibit 6.)

22 - - - -

23 Q. Mrs. McCord, I've handed you a document that's  
24 been marked as Defendant's Number 6. Can you  
25 identify this document?

1 A. It's a letter from the Ohio Environmental  
2 Protection Agency.

3 Q. Whom to?

4 A. Mr. C.R. Dixon, Junior.

5 Q. Did you prepare this letter?

6 A. Yes, I did.

7 Q. If I can direct your attention to Exhibit  
8 Number 1 again, is Exhibit Number 6 relating  
9 to the study proposal which is mentioned in  
10 the third paragraph on the second page of  
11 Exhibit Number 1?

12 MS. SUTULA: I would ask that the  
13 witness read Exhibit 6 in its entirety.

14 MR. SCHILLAWSKI: Certainly.

15 A. Could you repeat your question again?

16 Q. The third paragraph on the second page of  
17 Exhibit 1 mentions Mr. Ruud provided a copy of  
18 the study proposal. My question is is Exhibit  
19 6 related to that study proposal?

20 A. Yes, it is.

21 Q. Since Exhibit 1 has the date of April 19, 1985  
22 and Exhibit 6, which apparently refers to a  
23 study proposal discussed in Exhibit 1, has a  
24 date of April 25, 1984, is it correct that the  
25 date on Exhibit 6 should be 1985?

1           neutralization, designed to make -- to  
2           change," I'm sorry, "the physical, chemical or  
3           biological character or composition of any  
4           hazardous waste." Do you want me to continue  
5           to read?

6       Q.    I can paraphrase it. You indicated that a  
7           permit is required of the above  
8           activities?

9       A.    That is correct.

10      Q.    Is a permit required for any treatment that's  
11           done of a character of electric hazardous waste under  
12           any circumstances?

13      A.    There are --

14                           MS. SUTULA:    Objection.

15      A.    There may be exceptions.

16      Q.    Are you aware that -- are you familiar with  
17           the physical properties of the electric arc  
18           furnace dust that was produced at American  
19           Steel Foundries?

20      A.    In what, physical -- as a physics level,  
21           economical level, molecular level or lay  
22           person's level?

23      Q.    Reaching far back, I believe that physical  
24           chemistry is the characteristics that I'm  
25           referring to. In other words, not necessarily



1 the content, but the form in which the  
2 electric arc furnace dust is produced?

3 A. It's a fine dry powder-like material,  
4 generally a dark gray to light black in color.

5 Q. Is the electric arc furnace dust that is  
6 produced by American Steel Foundries a  
7 volatile material?

8 A. Volatile in the sense -- can you define  
9 "volatile"?

10 Q. Does it evaporate?

11 A. Evaporate; no, it's not a liquid.

12 Q. Does it sublime?

13 A. No.

14 Q. Does it give off gases of any kind?

15 A. It may.

16 Q. What gases does it give off?

17 A. It may give off by-products of other materials  
18 that were fired in the furnace. I'm not in a  
19 position to know that.

20 Q. Were you aware when number five was drafted,  
21 that American Steel Foundries considered the  
22 electric arc furnace dust and sand/slurry  
23 mixture to be the only waste which involved  
24 electric arc furnace dust which testing for  
25 has this characteristic which you --

1 A. Wait, I don't understand.

2 MS. SUTULA: Objection.

3 A. I don't understand. The way you phrase that  
4 question you make it sound like one waste  
5 stream. These are two waste streams.

6 Q. When the waste streams are combined, are they  
7 still two waste streams?

8 MS. SUTULA: Objection.

9 A. It's a mixture of two waste streams. It's  
10 a --

11 Q. Referring back to what you have described as  
12 the treatment rule, --

13 MS. SUTULA: Objection.

14 Q. -- about the mixing of a characteristic waste  
15 with a solid waste, is this combination of  
16 electric arc furnace dust and sand/slurry the  
17 resultant of that treatment rule which is then  
18 required to be tested for hazardous  
19 characteristics?

20 MS. SUTULA: Objection.

21 Objection to your characterization of her  
22 prior testimony. I don't believe she  
23 testified to any treatment rule. I believe  
24 there was some testimony back and forth about  
25 mixtures, and I think the question is overly

1           vague and I would ask that you rephrase it.

2                   MR. SCHILLAWSKI:   All right.

3   Q.       Is there a rule in the RCRA regulations which  
4           applies to the mixing of a characteristic  
5           waste and another solid waste?

6   A.       Yes, I think we dealt with that this morning.  
7           Yes.

8   Q.       I'm going to refer to that rule from here on  
9           out as, I believe you have referred to it  
10          before, as the treatment rule.

11   A.       Okay. That's not how EPA -- there are  
12          regulations that govern treatment.

13   Q.       Is there some shorthand that U.S. EPA refers  
14          to that?

15   A.       Just treatment; just treatment. There are  
16          regulations, many, that deal with treatment.

17   Q.       Does this particular regulation regarding the  
18          mixing of a characteristic waste with a solid  
19          waste require any testing of the end product  
20          of that mixing?

21   A.       Yes.

22   Q.       Are you aware -- were you aware when number  
23          five was drafted, that American Steel  
24          Foundries considered testing of that electric  
25          arc furnace dust and sand/slurry mixture to be

1 the only testing that was required?

2 MS. SUTULA: Objection.

3 A. They were not -- they were aware that they had  
4 to test the waste at the point of generation.  
5 I informed them of that several times, both in  
6 writing and orally.

7 Q. Are you familiar with the concept of a totally  
8 enclosed treatment facility?

9 A. I am.

10 Q. Is a permit required for treatment in a  
11 totally enclosed treatment facility?

12 A. Not under the regulations.

13 - - - -

14 (Thereupon, a seven-page letter to  
15 Catherine A. McCord from Geoffrey K. Barnes,  
16 dated August 8, 1985; attached one-page  
17 American Steel Foundries memorandum, dated  
18 July 26, 1985, were marked for the purpose of  
19 identification as Defendant's Exhibit 7.)

20 - - - -

21 Q. Mrs. McCord, I have handed you a document  
22 that's been identified as Defendant's Number  
23 7. Have you ever seen this document before?

24 A. I have.

25 Q. What is it?

1 A. It's a response to an Ohio EPA July 11th --

2 I'm sorry, what's the date of that letter --

3 Q. If it's easier to identify it by the exhibit  
4 number, that will --

5 A. It's the American Steel Foundries' attorney's  
6 response to Exhibit 5.

7 Q. Did you receive this Number 7?

8 A. The Ohio EPA did, yes.

9 Q. Did you personally receive it, the exhibit?

10 A. I have reviewed it after Ohio EPA received it.

11 Q. Can we --

12 - - - -

13 (Thereupon, a nine-page letter to  
14 Catherine A. McCord from Geoffrey K. Barnes,  
15 dated June 7, 1985, was marked for the purpose  
16 of identification as Defendant's Exhibit 8.)

17 - - - -

18 Q. I have handed you a document which is marked  
19 as Defendant's Number 8. Do you recognize  
20 this document?

21 A. Yes, I recognize it.

22 Q. What is it?

23 A. It's a letter from Squire, Sanders and Dempsey  
24 to the Ohio EPA.

25 Q. Is it addressed to you?

1 A. It is addressed to me at the Ohio EPA.

2 Q. Did you receive this letter?

3 A. The Ohio EPA did, yes.

4 Q. Did you see this letter after it was received  
5 by Ohio EPA?

6 A. Yes.

7 Q. If you can refer to page five of Exhibit  
8 Number 7 --

9 MS. SUTULA: I'd ask that you  
10 read the whole exhibit before any further  
11 questions.

12 Q. I'm going to be asking about Exhibit 7 and  
13 Exhibit 8.

14 A. So eight's the first letter. Okay. I  
15 completed reviewing the June 7, 1985 letter,  
16 Exhibit 8. Do I need to review Exhibit 7 as  
17 part of your next questions?

18 Q. The next questions I have to ask deal with  
19 totally enclosed treatment facilities. If  
20 there is a part of the letter that's  
21 appropriate, which I believe is page three,  
22 that might be faster, however, if you feel the  
23 need to review the entire document, please  
24 do.

25 A. Are you talking about Exhibit 7 or 8?

1 Q. Exhibit 7.

2 A. I would just like to quickly look through the  
3 entire letter.

4 Okay. I have completed reviewing Exhibit  
5 7.

6 Q. Referring to page five of Exhibit 7, and to  
7 the third paragraph on page three of Exhibit  
8 8, were you aware while you were an Ohio EPA  
9 employee that ASF considered its process of  
10 mixing EAF dust with clarifier slurry to take  
11 place in a totally enclosed facility?

12 A. At any point during my employment at Ohio  
13 EPA?

14 Q. Prior to your drafting of the notice of  
15 violation.

16 A. No, the first time that the argument that the  
17 clarifier sludge tank which is at the east  
18 wk. part of the facility, and the baghouse which  
19 is located in the northwest corner of the  
20 facility, were considered part of a totally  
21 enclosed treatment unit was in the letters  
22 that were received from Geoff Barnes from  
23 Squire, Sanders and Dempsey. The people at  
24 the facility never communicated that to me in  
25 personal meetings with the plant manager.

1 Q. Were these letters received by you -- were you  
2 aware after drafting the n.o.v. --

3 A. Which n.o.v.?

4 Q. The undated notice of violation, number five.

5 A. Well, let's see this one. I was -- the dates  
6 of these letters, or at least one of the  
7 letters has to do with -- is after the n.o.v.  
8 date and it deals with totally enclosed  
9 treatment units.

10 Q. Were you made aware, after you issued the  
11 notice of violation, that American Steel  
12 Foundries considered the process to be a  
13 totally enclosed treatment facility?

14 A. I read Squire, Sanders and Dempsey's response.

15 Q. Did you ever review -- did you believe that  
16 the process was a totally enclosed treatment  
17 facility while you were an Ohio EPA employee?

18 A. Absolutely not.

19 MS. SUTULA: Objection.

20 A. Absolutely not.

21 Q. Did you ever review the American Steel  
22 Foundries' process against the requirements  
23 for a totally enclosed treatment facility to  
24 form that belief?

25 A. Yes.



1 Q. Are there any notes or other documents which  
2 reflect that review?

3 A. Nothing other than what's in letters, formal  
4 correspondence from EPA to the facility.

5 Q. Did you ever conduct a point by point review  
6 of the American Steel Foundries' process  
7 against the requirement for a totally enclosed  
8 treatment facility?

9 MS. SUTULA: Objection. What's a  
10 point by point review?

11 Q. Did you ever look at the definition of a  
12 totally enclosed treatment facility and  
13 determine what parameters were required to fit  
14 within that definition and --

15 A. Yes -- I'm sorry, go ahead.

16 Q. Go a --

17 A. Yes.

18 Q. Did you then compare those parameters against  
19 the process used by American Steel Foundries?

20 A. Yes.

21 Q. Are there any notes or documents which  
22 delineate the process of you doing that?

23 A. No, not -- nothing other than the notices of  
24 violation that were issued by the agency.

25 Q. Were there any notices of violation issued by

1 Ohio EPA while you were employed there which  
2 address the issue of a totally enclosed  
3 treatment facility?

4 MS. SUTULA: Objection.

5 A. In an indirect fashion, yes.

6 Q. Do you recall what dates those notices of  
7 violation were issued?

8 A. Not offhand, no.

9 Q. If you refer to page six, the second paragraph  
10 of Number 7, did American Steel Foundries ask  
11 for a clarification of why Ohio EPA did not  
12 believe the process to be a totally enclosed  
13 treatment facility?

14 MS. SUTULA: Objection. The  
15 document speaks for itself.

16 A. Do you want me to read the letter?

17 Q. Are you aware of any requests by American  
18 Steel Foundries for a clarification of why you  
19 or Ohio EPA did not believe the process to be  
20 a totally enclosed treatment facility?

21 A. I'm aware of the request that is stated in  
22 this letter.

23 Q. Did you provide any answer to that question?

24 A. Yes.

25 MS. SUTULA: Objection.

1 A. I'm sorry.

2

- - - -

3 (Thereupon, a disussion was had  
4 off the record between Kathleen Ann Sutula and  
5 the Witness.)

6

- - - -

7 Q. Where was that answer to the request provided?

8 A. I believe it was provided orally.

9 Q. Do you recall the date of that oral  
10 conversation?

11 A. I do not.

12 Q. Do you have any notes or other documents which  
13 reflect the substance of that oral  
14 conversation?

15 A. I don't know.

16 Q. To your knowledge, did the Ohio EPA legal  
17 section or central office ever reply to this  
18 request for clarification?

19 MS. SUTULA: Objection.

20 You can go ahead and answer.

21 A. I don't recall.

22 Q. If we can go back to some of the earlier  
23 documents, I need to fill in some of the  
24 intervening spaces. The document, Exhibit  
25 Number 5, contains a reference to an April 26,

1 1985 inspection; is that correct?

2 A. Yes, it does.

3 Q. Am I correct that document number five would  
4 come in time sequence from all of the  
5 correspondence which you drafted for American  
6 Steel Foundries -- I want to make sure I'm  
7 doing this in the proper order -- immediately  
8 following Exhibit Number 6?

9 A. Exhibit Number 6 is dated April 25th, and  
10 Exhibit 5 was received at American Steel  
11 Foundries on July 11th of '85.

12 Q. I believe Exhibit 3 is dated February 22,  
13 1985 --

14 A. I'm sorry, I'm confused as to what your  
15 question is.

16 Q. I'm trying to place these exhibits which have  
17 been numbered in non chronological order into  
18 chronological order.

19 MS. SUTULA: Objection. The  
20 exhibit can do that by itself. You corrected  
21 the date and you supplied the dates through  
22 another exhibit.

✓ 23 Q. If we go back to Exhibit Number 6, did you  
24 have any contact with American Steel Foundries  
25 between the letter dated April 19th, which is

1 Exhibit 1, and the date of the letter which is  
2 Exhibit 6, April 25th?

3 A. In correspondence or orally or --

4 Q. Any kind of contact.

5 A. Not -- I don't recall. Is there some  
6 reference in these letters?

7 Q. I'm asking whether you recall any.

8 A. I don't recall any. I could review these  
9 letters again and see if there is a reference  
10 to them in the letters.

11 Q. Is it your normal practice to make notes of  
12 any contacts that you have with regulated  
13 entities such as American Steel?

14 A. It is my practice.

15 Q. Is it your practice to place those notes in  
16 that entity's files?

17 A. It depends. Now or in the past?

18 Q. While you were with Ohio EPA.

19 A. That was my practice, normal practice. Again,  
20 as I clarified in the previous question, that  
21 unless all items were covered in a letter,  
22 there may be cases where rough notes may have  
23 been discarded.

24 Q. If there were items which were not covered in  
25 a letter, was it your normal practice to

1 discard the notes?

2 A. No, but I did not have control of those files  
3 at all times.

4 Q. If you can refer to Exhibit 5 again, this  
5 exhibit refers to an inspection of the  
6 disposal site on -- sorry -- facility and  
7 disposal site on April 26, 1985. Do you  
8 recall any contact you had with American Steel  
9 Foundries between your letter of April 25th  
10 and the inspection of April 26th?

11 MS. SUTULA: Excuse me.

12 Clarification, I believe the testimony -- I  
13 don't believe the testimony -- you haven't  
14 tied down the year of this document. As I  
15 recall the testimony, it was either of two  
16 years.

17 MR. SCHILLAWSKI: I thought we  
18 had tied it down, but we can clarify it.

19 MS. SUTULA: You might have the  
20 court reporter go back. I thought it was one  
21 of two.

22 MR. SCHILLAWSKI: It would  
23 probably be easier just to clarify it.

24 MS. SUTULA: Probably.

25 Q. Referring to Exhibit Number 6, do you recall

1           what the correct date for this exhibit should  
2           be?

3   A.       I believe that the month and date is correct.  
4           I believe the year is incorrect.

5   Q.       Do you know what the correct year should be?

6   A.       I'm not sure. I believe it's 1985 instead of  
7           '84.

8   Q.       If you could refer to Exhibit Number 4, the  
9           third copy on the -- excuse me -- third  
10          paragraph on the second page.

11   A.       Exhibit 4, third paragraph.

12   Q.       I'm sorry, Exhibit Number 1.

13   A.       Yes.

14   Q.       Third paragraph on the second page.

15   A.       I'm sorry.

16   Q.       Does that help determine what the year is for  
17          Exhibit Number 6?

18   A.       Exhibit Number 1 indicates that Ohio EPA  
19          provided written comments on the submitted  
20          study proposal or will provide by  
21          approximately April 24, 1985.

22   Q.       Are those comments contained in Exhibit Number  
23          6?

24   A.       Yes, I believe so.

25   Q.       Does that help you determine what the date,

1 correct date should be for Exhibit Number 6?

2 A. It indicates to me that the proper year most  
3 likely is 1985 for Exhibit Number 6.

4 Q. Do you recall any contact that was had with  
5 American Steel Foundries in the near future,  
6 let's say a month prior to the inspection of  
7 April 26, 1985, other than what's contained in  
8 Exhibit Number 6?

9 A. Written or oral?

10 Q. Either.

11 A. Could you be specific with whom? It may  
12 refresh my memory.

13 Q. I'm asking if you recall any.

14 A. I don't recall.

15 Q. You don't know of any specific --

16 A. I don't recall.

17 Q. Again, would it have been your practice to  
18 make notes of such contact, if there was such?

19 A. Yes.

20 Q. Would it have been your practice to put those  
21 notes in your file?

22 A. Under certain circumstances, yes.

23 Q. If those notes were not subsequently reflected  
24 in a written correspondence with American  
25 Steel Foundries, would it have been your



1 practice to put them in a file?

2 A. It would have been my practice to retain  
3 them. They may not have been retained by Ohio  
4 EPA.

5 MR. SCHILLAWSKI: I'm going to  
6 try to do this together. We can do it  
7 separately if you wish.

8 Q. Exhibits 1 through 6 --

9 A. Could I take a break? It will just be a  
10 moment.

11 - - - -

12 (Thereupon, a recess was had.)

13 - - - -

14 Q. Were documents marked as Defendant's Exhibits  
15 1 through 6 all produced by you in the  
16 ordinary course of your duties as an Ohio EPA  
17 employee?

18 A. They -- I think it would be proper to  
19 characterize them as something produced by  
20 Ohio EPA.

21 Q. Were they produced in the ordinary course of  
22 Ohio EPA's business?

23 A. Yes.

24 Q. While you were employed with Ohio EPA, did it  
25 ever take any enforcement action against

1 American Steel Foundries for hazardous waste  
2 violations?

3 A. The notice of violation, yes.

4 Q. Was there ever an enforcement referral?

5 A. From --

6 Q. Northeast district office.

7 A. To?

8 Q. Central office.

9 A. I don't recall.

10 Q. Was there ever any formal litigation by the  
11 State of Ohio against American Steel  
12 Foundries?

13 MS. SUTULA: Objection.

14 You may answer.

15 A. There has been recently, yes.

16 Q. While you were employed with Ohio EPA, was  
17 there ever any formal litigation?

18 A. No.

19 Q. While you were employed with Ohio EPA, were  
20 there ever any Director's orders from Ohio EPA  
21 against American Steel Foundries?

22 A. Not in the hazardous waste program. I don't  
23 know about solid waste or any of the other  
24 medias, such as air or water.

25 Q. Did you recommend action against American

1 Steel Foundries while you were an Ohio EPA  
2 employee?

3 A. To whom?

4 Q. To your superiors.

5 A. What action? We did issue the notice of  
6 violation.

7 Q. Did you ever recommend any further action  
8 against American Steel Foundries?

9 A. I did not recommend, no.

10 Q. To your knowledge, did any of your superiors  
11 recommend any further action?

12 A. I believe other options were discussed. I  
13 don't know if they ever recommended any.

14 Q. Do you recall what those other options were?

15 MS. SUTULA: Objection.

16 A. Alternative enforcement action.

17 Q. Were you present in any of the discussions of  
18 these other alternative actions?

19 MS. SUTULA: Objection.

20 A. I believe I must have been, otherwise I  
21 wouldn't know about them. I don't recall any  
22 details.

23 Q. Did you take any notes of these discussions?

24 A. I don't believe so.

25 Q. Were you of the opinion that alternative

1 enforcement action should be used?

2 MS. SUTULA: Objection.

3 Do not answer that question,  
4 Catherine.

5 Her opinion as to actions that  
6 obviously were not taken is irrelevant. She  
7 don't -- you have not shown that she has the  
8 power or had the power or authority to  
9 recommend or refer a case, so that's not  
10 relevant. We're instructing her not to  
11 answer. If you lay the proper foundation, I  
12 may withdraw the instruction.

13 MR. SCHILLAWSKI: I believe the  
14 foundation's already laid that <sup>MS</sup>~~Mrs.~~ McCord is  
15 a United States EPA representative at the  
16 present time also involved with American Steel  
17 Foundries, and while she was with Ohio EPA,  
18 she was involved with American Steel  
19 Foundries, that U.S. EPA has now instituted  
20 litigation against American Steel Foundries  
21 and Mrs. McCord is involved with the U.S. EPA  
22 in the prosecution of that litigation. I  
23 think it's clearly relevant for me to inquire  
24 into Mrs. McCord's opinions and actions while  
25 an employee of the Ohio EPA, because she

1 subsequently became an employee of the U.S.  
2 EPA and continued her involvement.

3 MS. SUTULA: I don't think you  
4 laid any foundation as to how a case is  
5 referred, if it was referred, from whom it was  
6 referred. I don't think you laid anything as  
7 to whether it was her duty to refer an action  
8 and what levels. That's the foundation that I  
9 think hasn't been laid.

10 If she had an opinion -- my  
11 secretary has an opinion about many of my  
12 cases, and it doesn't mean squat. You haven't  
13 laid the foundation here for her to have an  
14 opinion that would have any relevance to who  
15 or whatever actions were taken by either  
16 agency or both.

17 Q. While you were an employee of Ohio EPA, did  
18 you ever make recommendations as to what type  
19 of enforcement action should be taken for any  
20 of the regulated entities you were involved  
21 with?

22 A. Yes.

23 Q. Did your superiors ever request any  
24 recommendations from you as to what type of  
25 enforcement action should be taken?

1 A. ~~Not to what type.~~ *yes*

2 Q. Did your superiors ever request any  
3 recommendations from you as to whether any  
4 additional enforcement action should be taken  
5 against regulated entities you were involved  
6 with?

7 A. That is a normal role of the inspectors, yes.

8 Q. Did you have an opinion as to whether further  
9 enforcement action should be taken against  
10 American Steel Foundries while you were an  
11 Ohio EPA employee?

12 MS. SUTULA: Objection. I want a  
13 time frame, and you said "any further."  
14 Further than what? I want the question to be  
15 specific.

16 Q. Following the issuance of your notices of  
17 violations to American Steel Foundries, up  
18 until the time when you were no longer an Ohio  
19 EPA employee, did you have any opinion as to  
20 whether any further enforcement action beyond  
21 the notice of violation should be taken  
22 against American Steel Foundries?

23 MS. SUTULA: Still object, but  
24 you may answer.

25 A. They are not my notices of violation. They

1 are either Ohio EPA's or U.S. EPA notices of  
2 violation.

3 Q. Given that it is Ohio EPA's notice of  
4 violation, did you have an opinion, during  
5 that time frame which I have referred to, as  
6 to whether further enforcement action should  
7 be taken against American Steel Foundries?

8 A. Is this once I became a U.S. EPA employee?

9 Q. No.

10 A. This is while I was --

11 Q. While with Ohio E --

12 A. I had an opinion that the violations were not  
13 resolved, which means the enforcement action  
14 should continue. It was not influenced by my  
15 opinion.

16 Q. Did you ever express this opinion to your  
17 superiors?

18 A. No, I don't think so.

19 Q. Why did you leave Ohio EPA?

20 A. I moved to Chicago.

21 Q. What was the reason for that move?

22 A. My husband's company asked him to take a  
23 position in Chicago.

24 Q. Was there any other reason that you moved to  
25 Chicago?

1 A. Other than I'm married to him and I love him,  
2 no.

3 Q. How did you obtain your job at U.S. EPA?

4 A. I had an interview.

5 Q. Who was that interview with?

6 A. James Brossman.

7 Q. Were there any other interviews you had?

8 MS. SUTULA: Objection. With the  
9 U.S. EPA or --

10 A. No, I was offered a job based on that  
11 interview.

12 Q. During that interview, was there any mention  
13 of the cases that you had worked on at Ohio  
14 EPA?

15 MS. SUTULA: Objection.

16 A. I don't believe so. Not cases specifically.

17 Q. When you left Ohio EPA, did you take copies of  
18 any of the file materials regarding any of the  
19 regulated entities that you worked at while at  
20 Ohio EPA with you?

21 A. At the point that I physically moved or  
22 something that was sent later?

23 Q. Did you take any physically with you when you  
24 moved?

25 A. Did I take copies, did you say?



1 Q. Did you take copies or any other file  
2 materials?

3 A. I don't believe so.

4 Q. Didn't you take any American Steel Foundry  
5 file materials with you when you went to U.S.  
6 EPA?

7 A. There were materials -- files sent to me.

8 Q. Did you request that those files be sent to  
9 you?

10 A. Yes, I did, at the instruction of my  
11 supervisor.

12 Q. How did you become the U.S. EPA enforcement  
13 person in charge of American Steel Foundries?

14 A. By assignment of my two supervisors.

15 Q. Did you express to your two supervisors that  
16 you had worked on American Steel Foundries  
17 while at Ohio EPA?

18 A. They knew of that, yes.

19 Q. Did you request that you be assigned to be the  
20 enforcement person for American Steel  
21 Foundries?

22 A. No, I don't believe <sup>SO</sup> ~~I informed them of that.~~

23 Q. Do you know how U.S. EPA became aware that you  
24 had worked on American Steel Foundries?

25 A. U.S. EPA I believe had copies of inspection

1 reports.

2 Q. Did you ever mention to anyone at U.S. EPA  
3 that you would like to be the enforcement  
4 person for American Steel Foundries?

5 MS. SUTULA: Objection.

6 A. I don't recall.

7 Q. Why is the process which is used by American  
8 Steel Foundries to mix electric arc furnace  
9 dust with clarifier slurry, which was used  
10 prior to May 1987, not an enclosed treatment  
11 facility?

12 MS. SUTULA: Objection. I think  
13 that's calling for a legal conclusion. You  
14 can ask her facts, but not legal conclusions.

15 Q. You have expressed that you have undergone a  
16 number of training courses in RCRA regulations  
17 and that you made a comparison of the  
18 regulatory requirements for a totally enclosed  
19 treatment facility against the process used by  
20 American Steel Foundries. Based on that  
21 review, why is the process used by American  
22 Steel Foundries to mix the furnace dust and  
23 clarifier slurry not a totally enclosed  
24 treatment facility?

25 A. Because they are not an integral part of the

1 same unit, the same device.

2 Q. Where do you find the requirement in the  
3 regulations that they be an integral part of  
4 the same device?

5 MS. SUTULA: Objection.

6 A. Where do I find it in the regulations?

7 Q. Yes.

8 A. In the regulations I do not find those  
9 specific words.

10 Q. What is your conclusion based on?

11 A. EPA guidance documents.

12 Q. Can you identify those EPA guidance documents?

13 A. There is a memo that deals with totally  
14 enclosed treatment units, which I believe was  
15 turned over in discovery.

16 - - - -

17 (Thereupon, a one-page letter to

18 Ronald E. Meissen from Alfred W. Lindsey,

19 *de* date-stamped July 27, 1981; attached

20 seven-page document captioned 'Totally Enclosed  
21 Treatment Facility, Regulatory Clarification,'  
22 were marked for the purpose of identification  
23 as Defendant's Exhibit 9.)

24 - - - -

25 Q. I have handed you a document which has been

1 marked as Defendant's Exhibit 9. Is this --  
2 well, first, do you recognize this document?

3 A. I do not recognize this letter, no.

4 Q. If I can refer you to the second page and  
5 following in the exhibit, do you recognize  
6 that document?

7 A. I do not.

8

9 (Thereupon, a one-page document  
10 captioned 'EPA Directive Number 9432.00-1,'  
11 attached two-page memorandum to David  
12 Stringham from Marcia Williams, <sup>d</sup>date-stamped  
13 February 11, 1986, were marked for the purpose  
14 of identification as Defendant's Exhibit 10.)

15

16 Q. I have handed you a document marked as  
17 Defendant's Exhibit 10. Do you recognize this  
18 document?

19 A. Yes, I do.

20 Q. Is this the document which you referred to as  
21 the guidance document you used in determining  
22 whether or not the American Steel Foundries  
23 process was a totally enclosed facility?

24 A. I believe it's one of the documents, yes.

25 Q. Is this the document that you used to make

1           your determination that it was not a totally  
2           enclosed treatment facility because they were  
3           not part of the same process?

4       A.     This was -- this document may have been used  
5           in making our decision. There were several  
6           conversations and documents that were  
7           reviewed.

8       Q.     Can you identify any of the other documents  
9           that you're referring to?

10      A.     I believe there may be one more memo. I don't  
11           recall. I'm not sure. This doesn't look like  
12           the memo I was thinking of. It might just be  
13           that it's reduced and it looks a little  
14           different.

15      Q.     If I could refer you -- well, you have  
16           testified that you are not familiar with the  
17           following documents on Exhibit 9.

18      A.     It does not look familiar to me. I'm not  
19           certain if I may have reviewed this document  
20           in the past. It's not clear where this letter  
21           and the attachment, enclosure to this letter,  
22           came from.

23                   MR. SCHILLAWSKI:     Well, if I  
24           could state for the record that documents nine  
25           and ten were received by Squire, Sanders and

1 Dempsey in response to a Freedom of  
2 Information Act request for all U.S. EPA  
3 guidances dealing with totally enclosed  
4 treatment facilities.

5 MS. SUTULA: You can state that  
6 for the record, but that doesn't mean this  
7 witness has any familiarity with it or I am  
8 accepting your statement for the record at  
9 this time, but you can state it for the  
10 record.

11 Q. Is there any other reason -- well, first of  
12 all, let's try to clarify your description of  
13 the first reason why you feel it's not a  
14 totally enclosed treatment facility. You  
15 stated, I believe, and please correct me if  
16 I'm wrong, that it's not a totally enclosed  
17 treatment facility because they are not part  
18 of the same process. Can you describe what  
19 you mean by that?

20 A. I don't believe I said that exactly. I  
21 believe I said they were not integral to the  
22 same process, that the co-mingling was not  
23 incidental to the production process, but  
24 rather the two accumulation points were  
25 physically separated and not connected.

1 Q. Is it then your conclusion that there is a  
2 requirement for a totally enclosed treatment  
3 facility to involve physical connection of the  
4 two accumulation points?

5 MS. SUTULA: Objection. I  
6 believe she was referring to what is in this  
7 case. She's not referred to what generally  
8 would be acceptable in any other case.

9 A. It's a case by case decision.

10 Q. Was there no physical connection between the  
11 roll-off tank, I believe you referred to it  
12 as, which contained the sand/slurry and the  
13 electric arc furnace baghouse?

14 A. There is no physical connection.

15 Q. How were the electric arc furnace dust  
16 materials transferred into the roll-off  
17 container?

18 A. At the base of the baghouse, there is a  
19 rubber -- rubberized sock or tube,  
20 approximately nine to 12 inches in diameter,  
21 that is lowered into an opening in top of the  
22 container, so that the baghouse dust is  
23 emptied into the tank.

24 Q. The tank at that point is in physical  
25 proximity to the electric arc furnace

1 baghouse?

2 A. I'm confused. Are you talking about the tank  
3 that was over at the other end of the facility  
4 that is then moved over to --

5 Q. Yes, at the time that the two materials are  
6 co-mingled, are they in physical proximity?

7 A. Because the tank has been moved from one  
8 section of the facility down to the other?

9 Q. Yes.

10 A. The <sup>container</sup> ~~tank, the mobile tank, which is on the~~  
11 ~~back of a --~~ <sup>is</sup> it's on a sled pulled on top of a  
12 truck body, is moved and placed underneath the  
13 baghouse. The baghouse is emptied into the --  
14 into that tank truck.

15 Q. Is it then your interpretation of the  
16 regulations that a physical movement of one  
17 waste material to another point where a second  
18 waste material is added, means that that  
19 process cannot be a totally enclosed treatment  
20 facility?

21 MS. SUTULA: Objection.

22 A. That's true. It cannot. The waste was not  
23 accumulated, the original waste was not  
24 accumulated in that tank.

25 The slurry, the solid waste slurry, was



1 accumulated in another tank and then  
2 transferred into the mobile transport unit.  
3 The truck was then driven to the other end of  
4 the plant and placed under the baghouse. That  
5 is not part of a totally enclosed treatment  
6 unit.

7 Q. Is there any other reason that you interpret  
8 the American Steel process as not being a  
9 totally enclosed treatment facility?

10 MS. SUTULA: Objection.

11 A. That's the major basis for my conclusion.

12 Q. Are there any other bases for your conclusion?

13 A. No.

14 Q. Does U.S. EPA require dates for the start of  
15 hazardous waste accumulation to be marked on  
16 accumulation containers when the waste  
17 container is transported out for disposal that  
18 same day?

19 A. You asked several questions in one. First of  
20 all, does EPA require dating of containers; in  
21 certain circumstances, yes. It depends on  
22 whether or not the facility has a permit to  
23 store waste or not.

24 Q. If a facility does not have a permit to store  
25 waste, does U.S. EPA require that the date

1           when hazardous waste starts, be marked on the  
2           containers?

3       A.     The trigger in those circumstances is when the  
4           waste is first placed into the container.

5       Q.     When that container is transported for  
6           disposal the same day that the waste is first  
7           placed in that container, does U.S. EPA  
8           require accumulation start dates to be marked  
9           on that container?

10      A.     The transport is not the trigger for the  
11           necessity to have a date. It's the placement  
12           of waste into the container that triggers the  
13           date requirement, the marking requirement.

14      Q.     If there is a time interval of less than an  
15           hour between when the waste is put in a  
16           container and when that container is  
17           transported for disposal, is there a  
18           requirement that the day that waste was put in  
19           the container be marked on the container?

20      A.     Again, it's not that the waste is being  
21           transported that triggers whether or not the  
22           containers have to be dated. It's the date  
23           that waste was placed into the container.  
24           Whether or not it sits there for a day or an  
25           hour or whether or not it's moved off site,

1           that dating requirement ~~is in~~ -- does exist.

2       Q.       Then it's U.S. EPA's position that when a  
3           hazardous material is placed in a container  
4           and that container is immediately transported,  
5           that that container must be marked with an  
6           accumulation start date?

7                       MS. SUTULA:    Objection.   We have  
8           not identified this witness as being able to  
9           speak on U.S. EPA's position.   If you want to  
10          ask her position, as to whatever her position  
11          is, that's fine, but we have not identified  
12          her to speak as an agent for the government in  
13          this deposition.

14       Q.       Is it your interpretation of the regulations  
15           that an accumulation start date is required to  
16           be placed on a container if hazardous waste is  
17           placed in that container and the container is  
18           immediately transported off for disposal?

19       A.       As I previously stated, the transportation of  
20           that container is not relevant to triggering  
21           that requirement, and the requirement only  
22           exists for people who do not have a permit for  
23           container storage.

24       Q.       Is it then your interpretation that it does  
25           not matter how brief a time the waste is in

1 the container before it's transported for  
2 disposal?

3 A. Again, the trigger for labeling and marking  
4 has nothing to do with transportation  
5 requirements.

6 Q. What substantive purpose is served in your  
7 interpretation by the marking of an  
8 accumulation start date on a container when  
9 that container is immediately moved off for  
10 disposal?

11 MS. SUTULA: Objection.

12 You may answer it.

13 A. That's -- that's not what I said. I said that  
14 transportation has nothing to do with  
15 triggering the requirement for labeling the  
16 containers.

17 Q. I understand that that is your answer. I'm  
18 asking you in your opinion, is there any  
19 substantive purpose served by requiring the  
20 placement of an accumulation start date onto a  
21 container when that container is immediately  
22 moved off site for disposal following the  
23 placement of hazardous waste in the container?

24 MS. SUTULA: Objection.

25 You don't have to answer that as

1 to your opinion. That's outside your field of  
2 expertise. I don't know what he's going to  
3 and we haven't classified you as an expert as  
4 to substantive accumulation start dates. I  
5 instruct you not to answer.

6 Q. Was the tank which was used by American Steel  
7 Foundries to mix EAF dust with the clarifier  
8 slurry during your employment as an Ohio EPA  
9 employee, used to contain an accumulation of  
10 material?

11 A. No, not that -- not to my knowledge, not while  
12 I was at the facility.

13 Q. Isn't it true that the tank was used to  
14 contain sand/slurry?

15 A. Sand/slurry was trans -- was transferred from  
16 an accumulation tank to the -- to the truck,  
17 that's right.

18 Q. Was the tank truck used to contain that  
19 material?

20 A. It received material from the accumulation  
21 tank, yes.

22 Q. Does U.S. EPA have any guidance or regulation  
23 which would limit the definition of an  
24 accumulation tank or container to only the  
25 first container into which material is placed?

1 MS. SUTULA: Objection.

2 If you know.

3 A. I believe there are guidances, and if you look  
4 at the regulations, accumulation is defined  
5 and I believe there are guidances on the point  
6 of generation. I don't recall specifically,  
7 but -- what guidances there are.

8 Q. Based on your knowledge of the regulations, if  
9 a facility placed waste into one tank and  
10 later transferred that waste into containers  
11 in which it was stored for a period and then  
12 transported off site, would the containers in  
13 which the waste was placed second be regarded  
14 as an accumulation container?

15 A. No, not the initial. I also need more --

16 Q. Would it be regarded as a second accumulation  
17 container?

18 A. The time frame does not start over, though.  
19 You didn't quite give enough facts for me to  
20 answer that question.

21 There may be a difference between a  
22 permitted facility and a non-permitted  
23 facility and whether or not the waste is a  
24 solid waste versus a hazardous waste.

25 Q. If the waste was a hazardous waste and the

1 facility had no permit --

2 A. Okay.

3 Q. -- and it was placed into a container which  
4 had an accumulation start date on it, and then  
5 the waste was transferred from that first  
6 container into a second container, and again  
7 kept on the facility for a period of time,  
8 would that second container be regarded as an  
9 accumulation container to which the  
10 accumulation container regulations would  
11 apply?

12 MS. SUTULA: Objection. You are  
13 asking a hypothetical question which is  
14 drawing a legal conclusion from the witness  
15 who has not been identified as an expert nor  
16 qualified as an expert. If she wants to give  
17 her personal opinion to your hypothetical for  
18 whatever it's worth, but I want you to be sure  
19 you understand this is not the opinion of the  
20 United States nor is it binding on the United  
21 States.

22 Q. Is it your interpretation of the regulations  
23 that that second container would be regarded  
24 as an accumulation container?

25 A. No; storage container.

1 Q. What is your interpretation of the difference  
2 between an accumulation container and a  
3 storage container?

4 MS. SUTULA: Renew my objection  
5 to all these hypothetical questions, the  
6 questions based on these hypotheticals.

7 A. Shall we look at Webster's definition of  
8 "accumulation" versus "storage"?

9 The waste was accumulated or collected,  
10 the slurry or whatever this -- I guess we're  
11 talking about a hypothetical waste stream  
12 here.

13 Q. Use the slurry as an example.

14 A. What you are saying is is hazardous waste --

15 MS. SUTULA: Objection if are you  
16 going to use the slurry now in that question.  
17 I have not heard any testimony that the slurry  
18 has been put in drums. Is this a hypothetical  
19 or is this a question on our case?

20 MR. SCHILLAWSKI: I will withdraw  
21 that question.

22 MS. SUTULA: Thank you.

23 Q. Does the tank which was used to contain the  
24 slurry which was then rolled off onto the  
25 truck placed under the EAF baghouse and used



1 to transport the material to Sebring, meet the  
2 regulatory definition of a container?

3 MS. SUTULA: Objection.

4 A. Does the truck; yes, it does. It's a portable  
5 container under the regulations. ✓

6 Q. Does that tank -- is that tank used to contain  
7 sand washer slurry?

8 A. Have I seen it?

9 Q. Yes.

10 A. I have seen -- and I don't know what  
11 particular <sup>container</sup> ~~tank~~ we're talking about, but I  
12 have seen American Steel Foundries' employees  
13 transfer sand washer slurry from the  
14 accumulation tank into this tank truck.

15 Q. Is that tank truck then used to contain that  
16 transferred material?

17 A. Material is placed into the portable  
18 container, yes.

19 Q. Is that tank truck then used to contain  
20 electric arc furnace dust in addition to the  
21 slurry?

22 A. I have seen American Steel Foundries'  
23 employees drive the truck from one end of the  
24 facility to the other and back that truck up  
25 underneath the baghouse and then put arc

1           furnace dust into it.

2       Q.     Are you familiar with U.S. EPA's  
3           interpretation that no permit is necessary if  
4           a hazardous waste generator chooses to treat  
5           hazardous waste in an accumulation container  
6           or tank?

7       A.     I'm not familiar with any regulation that  
8           allows for that.

9       Q.     Have you ever read 51 Federal Register at  
10           10,168, which is March 24, 1986, where the  
11           interpretation I just mentioned is published?

12      A.     To be certain I would like to see a copy of  
13           the Federal Register notice.

14      Q.     I do not have one with me, but --

15                   MS. SUTULA:     What cite?

16                   MR. SCHILLAWSKI:   51 Federal  
17           Register, 10,168, March 24, 1986.

18      A.     Could you give me the title for that Federal  
19           Register notice?

20      Q.     My recollection is that the interpretation is  
21           contained in a preamble to the changes to the  
22           small quantity generator regulations that were  
23           issued on that date.

24      A.     I have read the Federal Register preamble and  
25           the regulations that deal with those changes

1 in the regulations for small quantity  
2 generators.

3 Q. Do you recall that interpretation that no  
4 permit is necessary for treatment in  
5 accumulation containers?

6 A. I recall there is a statement made in the  
7 preamble where there were no changes made in  
8 the regulations.

9 Q. Would the U.S. EPA's interpretation of 51  
10 Federal Register 10,168 apply to the process  
11 by which American Steel Foundries mixes  
12 electric arc furnace dust with sand washer  
13 slurry?

14 MS. SUTULA: Objection. That  
15 calls for a legal conclusion. Again, this  
16 witness is not qualified to render an opinion  
17 on this. It is not the opinion of the United  
18 States. For what it's worth, she may answer.

19 A. That regulation -- those regulations cited in  
20 that register has to do with small quantity  
21 generators. I don't think those regulations  
22 apply to American Steel Foundries. ✓

23 Q. Is that the only reason in your opinion why  
24 that interpretation would not apply?

25 MS. SUTULA: Same objection.

1 A. What interpretation?

2 Q. The interpretation that no permit is required  
3 if a generator chooses to treat its hazardous  
4 waste in an accumulation container or tank.

5 A. Are we talking about the preamble or the  
6 regulations in that register?

7 Q. The preamble in the Federal Register,  
8 notifications in general and oftentimes,  
9 contains interpretations of those regulations  
10 in response to comments.

11 A. We have had case --

12 MS. SUTULA: Wait a minute. Wait  
13 a minute. Is there a question pending? I  
14 thought you were explaining to us what the  
15 preamble was.

16 Q. Is the interpretation contained in that  
17 preamble section applicable to American Steel  
18 Foundries -- sorry, inapplicable to American  
19 Steel Foundries in your opinion only because  
20 you interpret that interpretation as applying  
21 only to small quantity generators?

22 A. No, that is --

23 MS. SUTULA: Wait. Objection,  
24 same as before, and a further objection is  
25 that I don't think there is -- well, just the

1 same objection.

2 Now answer.

3 A. No.

4 Q. What other basis do you have --

5 MS. SUTULA: Same objection.

6 Q. -- for making the interpretation?

7 A. The regulations.

8 Q. What regulation is that based on?

9 A. The regulations promulgated under 40 CFR 270  
10 and 265.

11 Q. What do those regulations require?

12 A. Specific to this?

13 Q. Yes.

14 A. It requires a permit or interim status for  
15 treatment.

16 Q. Were you employed by U.S. EPA in August of  
17 1986?

18 A. No -- oh, wait. No -- wait. Oh, yes, I was.  
19 Sorry. I had to think twice about that.

20 Q. Were you present at a sampling inspection of  
21 American Steel Foundries, Alliance, Ohio  
22 foundries and Sebring Township, Ohio landfill  
23 on August 6th and 7th of 1986?

24 A. Yes, I was.

25 Q. Were you employed by U.S. EPA at that time?

1 A. Yes, I was.

2 Q. Who else from U.S. EPA was at the August 6,  
3 1986 sampling inspection?

4 A. Three employees out of our east -- out of our  
5 eastern district office in Westlake.

6 Q. Do you recall who those employees were?

7 A. Joe Fredle, Scott Thomas and a technician -- I  
8 don't recall his name. You have deposed him.

9

- - - -

10 (Thereupon, eight pages of  
11 handwritten notes were marked for the purpose  
12 of identification as Defendant's Exhibit 11.)

13

- - - -

14 Q. I have handed you a document that's been  
15 marked as Defendant's Number 11. Do you  
16 recognize this?

17 A. It appears to be notes from that sampling  
18 inspection.

19 Q. Did you keep these notes?

20 A. Yes, I believe they are my notes.

21 Q. Does this -- do these notes refresh your  
22 recollection as to who the other person was?

23 A. The fourth U.S. EPA employee is Mike Patton --  
24 P-a-t-t-o-n -- as indicated in my notes.

25 Q. I'm going to have to ask you a number of

1 questions which relate to these notes, so if  
2 you wish to refresh your recollection by  
3 reading through them, please do.

4 Okay?

5 A. Okay.

6 Q. Were all of the U.S. EPA employees who were  
7 present at the August 6, 1986 sampling  
8 inspection also present on the August 7, 1986  
9 sampling inspection?

10 A. I believe so. I'm not sure if all the -- if  
11 Scott Thomas was there the second day.

12 Q. Who was in charge of sampling in these  
13 sampling inspections on August 6th and 7th of  
14 1986?

15 A. Of directing

16 Q. Directing.

17 A. Myself.

18 Q. Who made the decisions as to what materials  
19 were to be sampled?

20 A. I believe I did after discussions with other  
21 members of the sampling team.

22 THE WITNESS: I need to talk with  
23 you a second.

24 - - - -

25 (Thereupon, a discussion was had

1 off the record between Kathleen Ann Sutula and  
2 the Witness.)

3 - - - -

4 A. Generally I had an idea what needed to be  
5 sampled prior to going to the site. There  
6 were some adjustments made in the field. The  
7 preliminary decisions on what needed to be  
8 sampled were conceived in discussions in my  
9 office in Chicago with my supervisors in  
10 addition to counsel.

11 Q. Did those initial discussions include  
12 discussions regarding the mechanisms by which  
13 the samples were to be taken?

14 A. With those individuals?

15 Q. Yes.

16 A. I don't recall. I don't recall if I spoke  
17 with them about it.

18 Q. Did you have previous discussions prior to the  
19 sampling inspection with anyone else regarding  
20 the mechanisms or protocols by which the  
21 samples were to be taken?

22 A. Yes.

23 Q. Who were those discussions with?

24 A. Joe Fredle.

25 Q. What were the substance of those discussions?



1 A. Type of equipment that he should bring, amount  
2 of sampling equipment, that type of thing.

3 Q. Was there any written document which reflects  
4 those discussions?

5 A. I don't recall. I don't recall any particular  
6 document.

7 Q. Let's focus on -- well, first of all, this may  
8 make the process easier, so let's get it out  
9 of the way now.

10 - - - -

11 (Thereupon, a one-page Environmental  
12 Protection Agency 'Chain of Custody Record,'  
13 dated August 7, 1986, was marked for the  
14 purpose of identification as Defendant's  
15 Exhibit 12.)

16 - - - -

17 Q. I've handed you a document that's been marked  
18 as Defendant's Number 12. Have you seen this  
19 document before?

20 A. Yes, I believe I have.

21 Q. What is it?

22 A. It's a chain of custody record for samples.

23 Q. Did you have any part in the preparation of  
24 this document?

25 A. No.

1 Q. Is this document relating to the sampling  
2 inspections which were conducted on August 6th  
3 and 7, 1986?

4 A. Yes.

5 Q. When did you arrive at American Steel  
6 Foundries for the sampling inspection on  
7 August 6th?

8 A. What time of day?

9 Q. Yes.

10 A. I don't recall exactly.

11 Q. Where did you arrive?

12 A. Where; at the landfill site.

13 Q. Was any American Steel Foundry employee at the  
14 site when you arrived there?

15 A. No.

16 Q. Did you enter the site at that time?

17 A. To drive onto the property?

18 Q. Yes.

19 A. Yes, I did -- I believe I walked on the  
20 property. We were parked off to the side.

21 Q. Did the other U.S. EPA employees accompany you  
22 at that time?

23 A. I believe so.

24 Q. What did you do when you walked onto the site?

25 A. I believe I was explaining the kind of

*no  
security*

1 disposal activity that I thought had gone on  
2 at the site, showing the site to the other EPA  
3 employees.

4 Q. What happened after that?

5 A. In what time frame?

6 Q. After you walked onto the site and were  
7 explaining to the other employees, what  
8 activities did you conduct?

9 A. I may have taken some photographs, I'm not  
10 sure. I don't recall specifically.

11 Again, what time frame? You -- I mean,  
12 after we arrived we eventually took samples,  
13 but that was hours probably before we got  
14 samples.

15 Q. Did you take any samples or disturb any  
16 material prior to the arrival of any American  
17 Steel Foundry employees on the site?

18 A. I don't believe so. I could -- if you want me  
19 to look at my notes I will pull them back  
20 out.

21 Q. Certainly. I would like you to use your notes  
22 to refresh your recollection as necessary.

23 A. Could you repeat the last question?

24 Q. Did you take any samples or disturb any  
25 materials at the landfill prior to the arrival

1 of any American Steel Foundries employee on  
2 the site?

3 A. I don't believe so.

4 Q. When was the first American Steel Foundry  
5 employee present on the site?

6 A. When a truck driver arrived. My notes  
7 indicate that a truck dumped a load at  
8 approximately 9:50 a.m.

9 Q. What did you do when that truck arrived?

10 A. When the truck first arrived, we saw or heard  
11 it coming up the road to the -- the side road  
12 to the site. We went back to the car to get  
13 our equipment. I believe I did not have my  
14 credentials in hand at that point, and I went  
15 back to the car with others to get our gear.  
16 I don't believe I even had my camera in hand.

17 Q. Did you make contact with the driver of that  
18 truck?

19 A. I did at some point talk with that driver and  
20 I identified myself. I don't recall what  
21 point that was.

22 Q. Was that the first time the truck was there or  
23 -- or on a subsequent time?

24 A. I don't recall.

25 Q. After you had made contact with the truck

1 driver, what happened?

2 A. The truck driver used the radio to call back  
3 to the production facility in Alliance, and  
4 other American Steel Foundries' employees  
5 arrived.

6 Q. Who were those employees?

7 A. My notes indicate that Dave Statler and J.G.  
8 Burky arrived at 9:55.

9 Q. What -- did you have any conversation with  
10 those employees?

11 A. Yes, I did.

12 Q. What was the substance of that conversation?

13 A. That announcement that U.S. EPA was initiating  
14 a sampling inspection.

15 Q. What did those employees say to you?

16 A. I believe they asked us to come back to the  
17 facility -- to the production facility.

18 Q. Did you do that?

19 A. After I believe collecting a sample of a load  
20 of material that was dumped.

21 Q. After you collected -- what samples did you  
22 collect?

23 A. Did I collect; you mean the team collect?

24 Q. Yes, what sample did the U.S. EPA employees  
25 collect?

1 A. We collected a total of 16 samples.

2 Q. What sample did you collect at the landfill  
3 prior to -- excuse me -- subsequent to your  
4 conversation with American Steel Foundry  
5 employees at which they asked you to go back  
6 to the production facility with them?

7 A. I believe it could have been up to two loads,  
8 two truck loads may have been dumped where  
9 samples were collected and split with American  
10 Steel Foundries' employees.

11 Q. Did American Steel Foundry employees request  
12 that you split samples with them?

13 A. I don't recall if they asked or if I -- my  
14 offer was accepted. I don't recall who  
15 initiated that.

16 Q. At any time during the August 6th and 7, 1986  
17 sampling inspection, did American Steel  
18 Foundries' employees ask that you split  
19 samples with them?

20 MS. SUTULA: Objection. She just  
21 testified to that.

22 MR. SCHILLAWSKI: She hasn't  
23 testified as to that particular conversation.

24 Q. At any time?

25 A. I have the same response. I don't recall who

1 initiated the agreement. This isn't the first  
2 time I have been involved with sampling there,  
3 so I don't recall.

4 Q. Did you go back to the production facility  
5 with American Steel Foundry employees?

6 A. Yes.

7 Q. And what did you do at that time?

8 A. Waited for an extended period of time while  
9 American Steel Foundries' employees contacted  
10 their legal counsel.

11 Q. Sorry, I have to back up just a bit here. Do  
12 your notes reflect what the numbers of the  
13 samples which you took at the landfill prior  
14 to going to the production facility are?

15 A. I don't know if they indicate that. My notes  
16 were not the primary notes for the sampling  
17 effort.

18 Q. Whose notes were?

19 A. The sampling technicians, Joe Fredle and Mike  
20 Patton.

21 Q. Does U.S. EPA have any standard operating  
22 procedures that require that one person keep a  
23 primary set of notes for a sampling  
24 inspection?

25 A. I don't think that term "primary" is used, no.

1 Q. Does U.S. EPA have any standard operating  
2 procedures that at least one employee on a  
3 sampling inspection will keep notes regarding  
4 that inspection?

5 A. I don't -- I wouldn't call that a standard  
6 operating procedure, no. There is no  
7 regulation <sup>any</sup> requirement for that. Some kind of  
8 log of samples collected is maintained.

9 Q. Are there any standard operating procedures as  
10 to what information is to be maintained in  
11 that log?

12 A. Not specifically, I don't believe. There are  
13 recommended information that is recorded, yes.

14 Q. Did you have any conversation with American  
15 Steel Foundry employees after you got to the  
16 production facility and after they had  
17 contacted legal counsel?

18 A. Yes.

19 Q. What was the substance of that conversation?

20 A. I was there for two more days, we talked many  
21 times.

22 Q. I'm asking you to limit this to a step by step  
23 approach. What was the first conversation you  
24 had with them after the --

25 A. I'm not sure. I'm not sure. I think it might



1 have been up in the works engineer's office.  
2 I don't recall.

3 Q. Do you recall the substance of the  
4 conversation?

5 A. I assume it would have been the sampling.

6 Q. What did you do after that conversation was  
7 completed?

8 A. Initiated the -- or, re-initiated the sampling  
9 effort.

10 Q. What did you do to accomplish that sampling  
11 effort?

12 A. Went back to our cars and put our field gear  
13 back on.

14 Q. After you put your field gear on, what did you  
15 do?

16 A. Collected waste samples.

17 Q. What waste sample did you collect first?

18 A. After we started again?

19 Q. Yes.

20 A. I don't recall exactly.

21 Q. Do your notes help refresh your recollection?

22 A. That other waste streams most likely --  
23 probably the carrier blast dust collector was  
24 sampled.

25 Q. What procedure or protocol did you use to

1 collect that sample?

2 A. Could you be more specific?

3 Q. Did you determine the mechanism and method by  
4 which that sample was to be collected?

5 A. Could you define mechanism and method? Those  
6 are very broad terms.

7 Q. Let's take it one at a time. Did you  
8 determine what sampling equipment would be  
9 used to take that sample?

10 A. As I stated previously, it was a joint  
11 decision on equipment. I essentially outlined  
12 the requirements for the sampling and Joe made  
13 suggestions since he had all the field gear.

14 Q. What equipment was used to take that sample?

15 A. For which sample?

16 Q. The carrier blast dust collector sample.

17 A. I don't recall specifically.

18 Q. Who determined at what point the sample would  
19 be taken?

20 A. Point in time or point in physical location?

21 Q. Point in physical location.

22 A. I believe it was American Steel Foundries'  
23 employees that walked us over to the dust  
24 collector and said this is where the waste  
25 sample can be collected physically because

1           there was an exit from the device.

2       Q.     What was the physical appearance of the  
3           device?

4       A.     I don't recall.

5       Q.     What was the physical appearance of the  
6           material from which you took a sample?

7       A.     Since it was called the dust collector, I  
8           guess it was a dust material.

9       Q.     Do you recall?

10      A.     I believe it was a dust material.

11      Q.     Was there a large amount of this material?

12      A.     I don't recall.

13                   MS. SUTULA:    Objection.

14      A.     If you want to bring the photographs in per  
15           each sample -- pictures were taken at each  
16           point where samples were collected.  I'm sure  
17           the photographs would be descriptive of how  
18           the wastes came out or what it looked like.

19      Q.     I may wish to follow up on that.

20                   What was the next sample that you took?

21      A.     I, as I said, I did not collect all samples,  
22           that it was the team, U.S. EPA.

23      Q.     What was the next sample that the team took?

24      A.     Looking at the chain of custody record, a time  
25           is listed for each -- time and date for each

1 sample collected is listed. The fourth --  
2 fourth sample in this chronology would be the  
3 knock-out dust collector.

4 Q. Do you recall the type of equipment that was  
5 used to take the sample of the knock-out dust  
6 collector?

7 A. The type of equipment?

8 Q. Yes.

9 A. Not specifically. I could make a good guess.

10 Q. Do you recall the procedure which was used to  
11 collect that sample?

12 A. Similar procedures were used in collecting all  
13 the dust samples, the -- the American Steel  
14 Foundries' employee essentially opened the  
15 opening to the waste accumulation unit and  
16 waste was allowed to flow, or it was either  
17 scooped out into a container.

18 Q. How did you determine which portion of the  
19 waste that was contained in the accumulation  
20 unit would be taken as a sample?

21 A. Material that came out was accumulated into a  
22 pan.

23 Q. Was the material that came out first the  
24 material that was accumulated into the pan?

25 A. All the material was accumulated into the pan.

1 Q. Was there ever a device that held more  
2 material than could be contained in your pan?

3 A. I'm sure. An American Steel Foundries'  
4 employee would open or shut -- turn on and  
5 then shut off, so in essence an American Steel  
6 Foundries' employee determined how much  
7 material. We would say we had enough for a  
8 sample, and an American Steel Foundries'  
9 employee would make that determination.

10 Q. Would there be material that was still left  
11 within the accumulation unit after --

12 A. Within the dust collectors?

13 Q. Yes.

14 A. I think you would have to ask American Steel  
15 Foundries' people, they would know how much  
16 waste accumulated in there. They aren't  
17 something you have a glass window you can see  
18 into.

19 Q. Do you recall from your observations during  
20 the sampling inspection whether a waste stream  
21 was cut off after it reached the point of  
22 filling your pan by an American Steel  
23 Foundries' employee shutting off a valve or  
24 closing a gate?

25 A. Yes, I think so, so that not to allow the



1 material to flow out onto the ground.

2 Q. Was it always the first amount of material  
3 that flowed out of the accumulation units that  
4 you took as a sample?

5 A. I don't recall.

6 Q. Did you have any protocol or mechanism by  
7 which you determined what material and the  
8 sequence of the material that flowed out of  
9 the unit would be taken as a sample?

10 A. There was no sequence because there was only  
11 one grab sample that was taken.

12 Q. Do you have any knowledge of whether the  
13 amount of material that you took in your  
14 sample pan reflected or rather consisted of  
15 the entire amount of material within the  
16 accumulation unit?

17 A. I think I already answered that question.

18 Q. Did you have knowledge prior to going to  
19 American Steel Foundries that there would or  
20 would not be more material in an accumulation  
21 unit than you could contain in your sample  
22 pan?

23 A. For which specific unit?

24 Q. Let's go through them one by one. Did you  
25 have that knowledge for the carrier blast

*first  
collected  
in unit more  
toxic than  
later collected*

1 collector?

2 A. No.

3 Q. Did you have that knowledge for the knock-out  
4 dust collector?

5 A. No.

6 Q. Did you have that knowledge for the cabinet  
7 blast dust collector?

8 A. No.

9 Q. Did you have that knowledge for the tumblast  
10 dust collector?

11 A. No.

12 Q. Did you have that knowledge for the south end  
13 sand system?

14 A. No.

15 Q. Did you have that knowledge for the sand wash  
16 and wet scrubber slurry?

17 A. Yes, I did.

18 Q. And what was that knowledge?

19 A. What was that knowledge?

20 Q. Did you know that there would be more?

21 A. Yes, because the tank holds several hundred  
22 gallons and we don't take several hundred  
23 gallons from a tank for a sample.

24 Q. Did you have knowledge of whether there would  
25 be more material than you could contain in

1           your sample pan for the EAF dust?

2       A.     Yes.

3       Q.     And what was that knowledge?

4       A.     That the EAF dust baghouse is bigger than a  
5           quart jar.

6       Q.     Did you have knowledge, prior to the sampling,  
7           of whether there would be more material than  
8           you could contain in your sample pan for the  
9           sample which is labeled as "after dump" on  
10          Exhibit 12?

11      A.     A quart jar is smaller than a truck, and if  
12           the truck was full or had more than one quart  
13           in it, the answer would be yes. If it had  
14           less than one quart, the answer would be no.  
15           EPA employees had no control over how much  
16           waste material were placed in these respective  
17           units. It was in total control of American  
18           Steel Foundries' employees.

19      Q.     Would that same answer hold true for the  
20           samples on number 12 that are identified as  
21           last half of dump, first half of dump and core  
22           of load?

23      A.     It would apply to all samples collected.

24      Q.     Let's go back to the knock-out dust  
25           collector. Was there any written protocol



1           that you used to determine what portion of the  
2           material that would be contained in that unit  
3           would be taken as a sample if there was more  
4           material than could be held in your sample  
5           pan?

6       A.     The decision to -- the answer is no.

7       Q.     What protocol did you use to determine what  
8           portion of the material in the unit would be  
9           taken as a sample if there was more than could  
10          be held in your pan?

11      A.     The decision would have to be made in a case  
12          by case basis.

13      Q.     What was the decision with respect to the  
14          knock-out dust collector?

15      A.     That a quart jar would not contain all the  
16          material in the dust collector.

17      Q.     How did you determine which of the material  
18          contained in the dust collector would be  
19          contained in your sample jar?

20      A.     It was material that American Steel Foundries  
21          allowed to flow out of the dust collector  
22          unit.

23      Q.     Did you give any direction as to what portion  
24          of the material in the dust collector unit  
25          American Steel Foundries let flow out of that

1 unit?

2 A. No.

3 Q. For the cabinet blast dust collector, what  
4 protocol did you use to determine what portion  
5 of the material would be taken as your sample?

6 A. Could you define "protocol"?

7 Q. What method did you use, what procedure did  
8 you go through, how did you make your  
9 decision?

10 A. All the material that came out of that unit  
11 was sampled.

12 Q. Was there more material in the unit than you  
13 sampled?

14 A. As I previously answered, there is no glass  
15 window into those units, I do not know.

16 Q. Let's go on to the tumblast dust collector.  
17 What method, protocol, procedure, did you use  
18 to determine what portion of the material in  
19 that unit would be taken as a sample?

20 A. The grab sample was taken of the material that  
21 the American Steel Foundries' employee allowed  
22 to exit from the dust collector.

23 Q. Was there more material in the dust collector  
24 than you took as your sample?

25 A. Again, I don't know.

1           To help you, you can ditto on all of  
2           these, save us a little time.

3   Q.    Do your previous answers to -- I'm not sure of  
4           the number of questions, regarding procedures  
5           used and whether there was more material than  
6           you took as a sample, apply to the south end  
7           sand system as well?

8   A.    No.

9   Q.    What procedure did you use to determine what  
10          portion of the material contained in the south  
11          end sand system would be taken as a sample  
12          from that system?

13   A.    Information provided by American Steel  
14          Foundries' employees.

15   Q.    What was the appearance of the material which  
16          you sampled from the south end sand system?

17   A.    I don't specifically recall.

18   Q.    Was there more material there than you could  
19          take as a sample?

20   A.    I don't recall.

21   Q.    What procedure did you use to determine what  
22          part of that material would be taken as a  
23          sample?

24   A.    I did indicate there was more material than a  
25          quart.

1 Q. You have previously indicated that there was  
2 more material in the sand wash and wet  
3 scrubber slurry than could be taken in a  
4 quart.

5 A. That's correct, the tank is open on the top.  
6 You can see it.

7 Q. How did you determine what part of the  
8 material in the tank would be taken as your  
9 sample?

10 A. The material in the tank was not sampled.

11 Q. Where did you take your sample from?

12 A. The pipe that discharges into the tank.

13 Q. How did you determine at what point in time  
14 you would take the material from the pipe that  
15 discharges into the tank?

16 A. American Steel Foundry told me that material  
17 was going to be discharged through that pipe.

18 Q. Was there more material which was discharged  
19 through that pipe than you could take as a  
20 sample?

21 A. I think I answered that this morning. That  
22 material is periodically placed into that  
23 tank.

24 Q. During the period of time when you took your  
25 sample of that material, was there more

1 material which came through the pipe than you  
2 could collect in your sample container?

3 A. As I stated this morning, the material, the  
4 jar was full and the material did splash up  
5 over the top of the jar.

6 Q. What procedure did you use to determine at  
7 what point during the time when material  
8 started coming out of the pipe until it ended  
9 coming out of the pipe, you would take the  
10 sample?

11 A. Explain "procedure."

12 Q. How did you determine at what point you would  
13 take the sample?

14 A. When the material came out of the discharge  
15 pipe.

16 Q. Was your procedure then to take the first  
17 material that came out of the discharge pipe  
18 as a sample?

19 A. Was to hold the jar under the pipe during the  
20 entire period.

21 Q. Were any materials involving electric arc  
22 furnace dust sampled on August 6th of 1986?

23 A. I don't believe so.

24 Q. Did you have any conversations with American  
25 Steel Foundry employees regarding your

1           sampling or your sampling inspection on August  
2           6, 1986, other than the first conversation  
3           which you have just described after American  
4           Steel Foundries had called their legal  
5           counsel?

6   A.    I described more than just that situation and  
7           yes, --

8   Q.    After that time?

9   A.    Yes, their -- they accompanied us the entire  
10          period of time for the two days.

11   Q.    What was the substance of the conversations  
12          subsequent to your conversation I believe you  
13          said in the works engineer's office?

14   A.    I don't recall.

15   Q.    Was there any discussion with American Steel  
16          Foundries' personnel regarding the mechanisms  
17          by which you would take samples?

18   A.    I don't recall.

19   Q.    Was there any discussion with American Steel  
20          Foundries' personnel regarding your presence  
21          at the Sebring landfill?

22   A.    I believe so.

23   Q.    What was the substance of that conversation?

24   A.    I'm not sure if my recollection is confused  
25          with this event or previous or later events,

1 but there was concern for our presence being  
2 at -- U.S. EPA employees -- at the landfill.

3 Q. What was that concern expressed to you as?

4 A. That U.S. EPA employees did not first go to  
5 the facility in Alliance, Ohio versus going to  
6 the facility in Sebring, Ohio.

7 Q. Had you had previous contact with American  
8 Steel Foundries regarding this issue?

9 A. I believe so. I'm not -- I don't recall if  
10 this was the first time this came up. It has  
11 come up more than once.

12 Q. What was the substance of the concerns that  
13 American Steel Foundries expressed to you  
14 regarding this issue?

15 A. That -- they requested that U.S. EPA come to  
16 the facility in Alliance prior to going to the  
17 facility in Sebring.

18 Q. Had you had a conversation with that substance  
19 prior to your arrival on August 6th and 7th?

20 MS. SUTULA: Objection. He's --  
21 she's testified she doesn't know. She's told  
22 you that twice.

23 Q. You can answer.

24 A. Again, I don't recall when that issue was  
25 first raised by American Steel Foundries. It

1           was raised more than once.

2       Q.     Let's focus on the August 7, 1986 sampling  
3           visit. Were any samples taken involving  
4           electric arc furnace dust on August 7, 1986?

5       A.     Yes.

6       Q.     If I can direct your attention to the section  
7           of your notes which is on a page headed eight  
8           slash seven slash 86, the entry at 12:30, is  
9           that the time that you -- well, would you  
10          please explain what that entry represents?

11      A.     The -- I will read from the document. It says  
12          "12:30, arrived at facility."

13      Q.     Could you explain what the next entry  
14          represents?

15      A.     What it represents or what it says?

16      Q.     What it represents.

17      A.     I don't think it represents anything other  
18          than what it says.

19      Q.     What is the tank that you referred to as  
20          having observed?

21      A.     I believe that's the tank in question.

22      Q.     Is that the tank that was used to contain the  
23          sand washer slurry?

24      A.     It was the tank that was used to receive  
25          slurry from the accumulation tank.



1 Q. What was the process that you observed  
2 regarding the use of that tank on August 7th  
3 of 1986?

4 A. At that moment or for the rest of the day?

5 Q. Let's walk through it. What was the first  
6 thing you observed?

7 A. My entry here at 12:45 says "observed tank  
8 that had been loaded on truck."

9 Q. What do you recall your actions having been  
10 and your observations having been in that time  
11 period?

12 A. That the truck -- the tank was loaded onto the  
13 truck from the station underneath the slurry,  
14 tank accumulation.

15 Q. Did you observe the tank being filled?

16 A. I don't believe so. I'm not sure in this  
17 instance. I have in the past.

18 Q. What happened after you observed the tank?

19 A. With the tank?

20 Q. The tank.

21 A. It was driven over to the baghouse.

22 Q. What happened at that time?

23 A. In the next few moments?

24 Q. Yes.

25 A. I believe an American Steel Foundries'

1 employee placed arc furnace dust into the  
2 portable container.

3 Q. Was any sampling done at this time?

4 A. My notes indicate that at one p.m. we began  
5 sampling the EAF on top of the truck.

6 Q. Who took that sample?

7 A. I believe one of our sampling technicians.

8 Q. What procedure was used to take that sample?

9 A. What procedure? Could you be more specific  
10 again?

11 Q. Could you describe the physical process that  
12 was used to take that sample, please?

13 A. A collection device was placed underneath the  
14 rubber sock under the baghouse and an American  
15 Steel Foundries' employee opened the opening  
16 at the bottom of the baghouse and allowed  
17 waste to flow into the receiving container.

18 Q. You previously testified that you knew prior  
19 to your sampling inspection that there would  
20 be more electric arc furnace dust in the  
21 baghouse --

22 A. That there could be by volume, yes.

23 Q. Could be by volume?

24 A. Right.

25 Q. Than you could take as a sample?

1 A. Right.

2 Q. How did you determine which portions of the  
3 electric arc furnace dust that were present in  
4 the baghouse would be taken as a sample?

5 A. The only dust that would be accessible to  
6 collect as a sample would be the dust that  
7 comes out of the opening.

8 Q. Was there more dust that came out of that  
9 opening than you could collect as a sample?

10 A. I believe dust was placed into the truck and  
11 the truck holds more than one quart.

12 Q. How did you determine at what point in the  
13 time period when dust was being taken out of  
14 the baghouse and placed into the truck that  
15 you would take the sample of the dust?

16 A. When the pan -- collection pan was full, it  
17 was pulled out.

18 Q. Was the collection pan placed under the sock  
19 of the baghouse prior to any material coming  
20 out?

21 A. I don't recall. Again, that may have varied,  
22 depending on the sampling method.

23 Q. Could you please explain what the entry in  
24 your notes under one o'clock, starting with  
25 the second -- sorry, "one" colon "o-o," is

- 1           that one o'clock?
- 2    A.     Yes.
- 3    Q.     The second line under there represents?
- 4    A.     What it says?
- 5    Q.     Yes.
- 6    A.     It says "took picture of representative level  
7           of material, slurry, already in tank."
- 8    Q.     Were you on top of the tank and observed the  
9           representative level of slurry?
- 10   A.     I was standing on the ground pointing to the  
11          level on the outside of the tank.
- 12   Q.     How were you able to determine what the level  
13          was on the outside of the tank?
- 14   A.     How was I able to?
- 15   Q.     Yes.
- 16   A.     I said I did not do that. I did not do that;  
17          I was standing on the ground.
- 18   Q.     You said you were pointing to the level on the  
19          outside of the tank?
- 20   A.     Yes.
- 21   Q.     Is that the level of material which was in the  
22          tank?
- 23   A.     Yes.
- 24   Q.     How did you determine what that level of  
25          material was?

1 A. By observations of EPA personnel on top of the  
2 tank truck.

3 Q. Who made those observations?

4 A. I believe Mike Patton. There's a photograph  
5 that indicates that situation.

6 Q. Do your notes reflect what the sample number  
7 of EAF dust sample was?

8 A. Do my notes?

9 Q. Yes.

10 A. No, I do not see an indication of what any of  
11 the sample numbers were. As I said  
12 previously, that information is in one of the  
13 sampling technician's notes.

14 Q. If you could flip to the next page, you may  
15 refresh your recollection.

16 A. There's an entry that says "S one zero EAF."

17 Q. What was the sample number of EAF dust?

18 A. There are several samples of EAF dust.

19 Q. Is there a sample number which identifies the  
20 EAF dust sample which you have just described  
21 being taken from the top of the truck while  
22 the truck was being loaded?

A. There was no sample taken from the top of the  
truck at that point. It was taken from the  
baghouse.

1 Q. What was the sample number that identifies the  
2 sample that was taken from the baghouse at  
3 that point?

4 A. As the chain of custody record and my notes  
5 say, S10.

6 Q. What was the level of slurry that was in the  
7 tank truck prior to the introduction of  
8 electric arc furnace dust into the truck?

9 A. Relative to what?

10 Q. Relative to the total height of the truck,  
11 approximately what percentage of the truck  
12 volume was filled?

13 A. Of the tank volume?

14 Q. Of the tank volume.

15 A. I recall approximately three-quarters or so.  
16 Maybe half. Again, that's indicated in  
17 photographs.

18 Q. What was the objective of the August 1986  
19 sampling with American Steel Foundries?

20 A. To collect samples of wastes generated and  
21 treated and disposed of at the two American  
22 Steel Foundries' facilities.

23 Q. Was a written description of that objective  
24 prepared?

25 MS. SUTULA: Objection.

1 A. I believe so.

2 Q. Did you prepare any description of that  
3 objective?

4 A. I believe so.

5 Q. Would that written description of the  
6 objective be contained in your notes?

7 A. No.

8 Q. Where would it be contained in?

9 A. In the documents requesting the  
10 inter-divisional assistance on the sampling  
11 effort, the sampling request form.

12 Q. Was a focus of the August 1986 sampling visit  
13 to sample EAF dust?

14 A. Yes.

15 Q. Was a plan for the process by which EAF dust  
16 would be sampled and any other streams that  
17 you were going to sample during that visit  
18 prepared prior to the visit?

19 A. I believe there was.

20 Q. What was that written description?

21 A. What was the document?

22 Q. Yes.

23 A. I believe there was a written document.

24 Q. Would that document be contained in your  
25 files?

1 A. If there was a written document, it should be  
2 in our files.

3

4 (Thereupon, a five-page  
5 'Environmental Services Division Field  
6 Investigation' form was marked for the purpose  
7 of identification as Defendant's Exhibit 13.)

8

9 Q. I have handed you a document which has been  
10 identified as Defendant's Exhibit Number 13.  
11 Have you seen this document before?

12 A. Yes.

13 Q. What is it?

14 A. It's a five-page U.S. EPA form.

15 Q. Does the form relate to the August 1986  
16 sampling inspection at American Steel  
17 Foundries?

18 A. I did not prepare the form, but it appears to,  
19 yes.

20 Q. Is this the document containing the sampling  
21 plan to which you refer to?

22 A. I don't know. I have never seen this other  
23 than in preparation for discovery.

24 Q. Do you recall what form the document was which  
25 you recall contained the written sampling



1 plan?

2 A. I don't -- I don't recall.

3 Q. Was it a typewritten document?

4 A. (Witness shrugging shoulders.)

5 MS. SUTULA: Answer verbally.

6 A. I don't know. I don't recall. Again, there  
7 were several sampling events. I don't recall  
8 if a specific sampling plan was written for  
9 this sampling effort.

10 Q. Was a focus of the August 1986 sampling visit  
11 to sample the mixture of electric arc furnace  
12 dust and sand/slurry as it was disposed of at  
13 the Sebring landfill?

14 A. You asked a previous question if the focus was  
15 on the EAF dust, I answered yes to that.

16 Q. This is a different material.

17 A. Are there two focii?

18 Q. Was a focus of your 1986 --

19 A. A focus.

20 Q. -- August 1986 sampling visit a sampling of a  
21 mixture of electric arc furnace and  
22 sand/slurry as it was disposed of at the  
23 Sebring landfill?

24 MS. SUTULA: Objection.

25 A. The objectives were to sample all wastes that

1           could potentially be hazardous waste at the  
2           production facility and to sample the material  
3           disposed of at the landfill.

4       Q.     Were you familiar with the process and  
5           procedure by which the roll-off tank was --  
6           roll-off tank which contained the mixture of  
7           electric arc furnace dust and sand/slurry, was  
8           dumped at the landfill?

9       A.     I'm not sure if I'd characterize that as if it  
10           was a true mixture. The material was  
11           biphasic.

12      Q.     Were you familiar with the process by which  
13           this material was dumped at the landfill?

14      A.     I have observed it being dumped at the  
15           landfill.

16      Q.     Were you familiar with that process prior to  
17           the August 1986 sampling inspection?

18      A.     I am familiar with that. I was familiar with  
19           it before. I have seen it dumped prior to the  
20           August sampling. I have seen it done several  
21           times in different locations.

22      Q.     Did you have any discussions relating to the  
23           process which would be used to sample the  
24           material in the truck, which was being dumped  
25           at the landfill, prior to your arrival at

1 American Steel Foundries?

2 A. Discussions with?

3 Q. Anyone.

4 A. Anyone, yes.

5 Q. Who were those discussions with?

6 A. Joe Fredle and other people in my office.

7 Q. Do you remember the other people you discussed  
8 it with?

9 A. Attorneys, my supervisor. I don't recall  
10 anyone else.

11 Q. Did you make any notes or other written  
12 document which reflects the substance of these  
13 discussions?

14 A. No, only -- no.

15 Q. Did you anticipate that any problems could be  
16 presented by sampling the material contained  
17 in the tank truck which was electric arc  
18 furnace dust and sand/slurry?

19 A. This is --

20 MS. SUTULA: Objection.

21 A. Yes, there were some physical dangers for  
22 having to be able to collect those samples.

23 Q. Could you describe what those problems were?

24 A. Problems in that while trying to sample while  
25 the material is being dumped, it's dangerous

1 to stand behind the truck, problems in that  
2 you have to go down into the landfill pit on  
3 soft material, concerns about exposures due to  
4 the hazardous constituents.

5 Q. Were there any other problems which you  
6 identified?

7 A. Not that I recall.

8 Q. Did the speed at which the truck would dump  
9 the material present a problem for sampling?

10 A. If we wanted to get multiple samples, yes.

11 Q. How did you determine to solve these problems  
12 in taking samples of that material?

13 A. Provisions were made to try to make the  
14 sampling effort more safe for U.S. EPA  
15 personnel.

16 Q. What were those provisions?

17 A. Wearing air purifying respirators, wearing  
18 protective clothing, roping off employees that  
19 had to go down into the waste pit, not  
20 standing behind the truck as a dump was  
21 occurring, developing remote sampling devices.

22 Q. What remote sampling devices were developed?

23 A. A sampling device to -- was rigged to be able  
24 to collect a sample or hold a sampling jar out  
25 behind the truck as it was being dumped -- as

1           it dumped the material.

2   Q.       Did you arrive at any solution to the problem  
3           posed by the structure of the truck dumping?

4   A.       Did I, or was there a solution?

5   Q.       Was there a solution which was arrived at?

6   A.       Yes.

7   Q.       What was that solution?

8   A.       That the truck would actually stop dumping --  
9           or, stop the elevation of the tank off the  
10          back end of the truck.

11   Q.       Did you direct the truck driver to dump his  
12          load in that manner?

13   A.       American Steel Foundries' employees did.

14   Q.       Did you direct the American Steel Foundries'  
15          employee to direct the truck driver to do  
16          that?

17   A.       I did not direct any American Steel Foundries'  
18          employees to do anything.

19   Q.       Did anyone else from U.S. EPA?

20   A.       Direct them to?

21   Q.       Yes.

22   A.       No; no.

23   Q.       Did you or any other U.S. EPA employee request  
24          that they do this?

25   A.       Yes.



1 Q. Was there any argument to your request?

2 A. None at all.

3 Q. Is the method by which the truck was dumped  
4 during your sampling of the material in that  
5 truck different from the other methods by  
6 which you had observed trucks of this material  
7 being dumped?

8 A. Yes, there was a difference in -- I have seen  
9 different methods used at different times  
10 depending on what truck driver it was and  
11 where the truck was physically dumping and how  
12 much material was in the truck.

13 Q. Was the mechanism used to -- was the dumping  
14 of the load of material contained in the truck  
15 while you were sampling faster or slower than  
16 the normal procedure that was used?

17 A. I don't know about the normal procedures.  
18 There were no normal procedures outlined.

19 Q. Was the speed at which the load was dumped  
20 faster or slower than other dumping that you  
21 had observed?

22 A. Overall?

23 Q. Yes.

24 A. It was slower because there were times when no  
25 material was flowing out of the back.

*no method  
to mixing*

1 Q. Was there any other time when you were not  
2 sampling that you observed a load being dumped  
3 when that load dumped more slowly than it was  
4 while you were sampling?

5 A. Well, I don't think I said it was dumped more  
6 slowly, I said the overall time, it was  
7 longer, because there was periods when no  
8 material was flowing out of the back. That  
9 doesn't mean the same thing as faster or  
10 slower.

11 Q. Was there any other dump that you observed  
12 while you were not sampling, which halted the  
13 dumping activities at some point in the middle  
14 of the dump?

15 A. I wouldn't say at the middle of the dump, no.

16 Q. Sometime during the process of dumping?

17 A. I have seen times when the material seems to  
18 be flowing out at different rates. Depends on  
19 the truck driver.

20 Q. Have you ever seen a time when there was a  
21 complete stop to the material flowing out?

22 A. Yes.

23 Q. Is that other than when you were sampling?

24 A. Yes.

25 Q. What were those times; do you recall?

- 1 A. In time or dates?
- 2 Q. Dates, yes.
- 3 A. I don't know.
- 4 Q. Were samples of the electric arc furnace dust  
5 sand/slurry mixture taken on August 7, 1986?
- 6 A. That is what the chain of custody form  
7 indicates.
- 8 Q. What were the -- would you please describe the  
9 process by which those samples were taken?
- 10 A. Which sample?
- 11 Q. The samples of the electric arc furnace dust,  
12 clarifier slurry mixture?
- 13 A. Again, there was more than one sample sampled.
- 14 Q. What was the first sample that was taken?
- 15 A. The first half of the dump, or the core of the  
16 load, it appears, at the landfill. Core of  
17 the load, S14.
- 18 Q. How was S14 taken?
- 19 A. The sample was collected out of a pan used to  
20 take material out of a two inch plastic core.
- 21 Q. How was the sample actually taken from the  
22 tank truck?
- 23 A. A core of material was extracted from the top  
24 of the truck through one of two ports that are  
25 on the top of the truck.



1 Q. Did you take that sample?

2 A. I -- I collected that core. At that point a  
3 decision to make it a sample had not been  
4 made.

5 Q. Would you please describe your physical  
6 activities in taking that core?

7 A. I climbed up on top of the truck, I took  
8 several photographs of the material that was  
9 inside the truck from the top of the truck, I  
10 observed that the slurry and the arc furnace  
11 dust were not mixed. I asked one of our  
12 sampling technicians to pass up to me the  
13 sampling tube or the Lexon tube and I pushed  
14 that tube down into the tank truck.

15 Q. How far did you push that tube down into the  
16 tank truck?

17 A. As far as *it could go.*  
~~I could reach.~~

18 Q. What was the level of material in the tank  
19 truck at the time you took the sample?

20 A. I'd have to look at the photographs to refresh  
21 my memory. Approximately a little over a half  
22 full.

23 Q. I believe you testified earlier that the  
24 represent -- the level of sand/slurry in the  
25 tank prior to the introduction of electric arc

1           furnace dust was approximately three-quarters  
2           of the volume of the tank?

3       A.     I think, or less. Or less. I think it would  
4           have to be less. That's an awful lot of  
5           waste.

6       Q.     How long was the Lexon tube that you used?

7       A.     ~~I don't recall.~~ Maybe four feet,  
8           approximately.

9       Q.     Is the tank higher than four feet in vertical  
10          height?

11      A.     I believe so.

12      Q.     Did you push the Lexon tube all the way to the  
13          bottom of the tank in taking the core?

14      A.     I believe so.

15      Q.     Did you feel it hit bottom?

16      A.     ~~I don't recall.~~ I believe so.

17      Q.     Was there any cap or other mechanism on the  
18          tube which held the sample in the tube when  
19          you withdrew it?

20      A.     Did I reach my arm down into the waste and put  
21          a cap on the bottom of the tube; no.

22      Q.     Was the tube a device which is referred to in  
23          various publications as a Coliwasa?

24      A.     No.

25      Q.     How is it different from a Coliwasa?

1 A. There is no closing device in the bottom.

2 Q. Would the --

3 MR. SCHILLAWSKI: Off the  
4 record.

5 - - - -

6 (Thereupon, a discussion was had  
7 off the record.)

8 - - - -

9 Q. Mrs. McCord, I believe before the break, and  
10 please correct me if I'm wrong, you testified  
11 that the Lexon tube that you used to take the  
12 core of the load did not have a mechanism by  
13 which the material would be kept in the tube;  
14 is that correct?

15 A. Not a physical mechanism. There is no bottom  
16 or spigot, that's right.

17 Q. How was the material kept in the tube that you  
18 used to take the core sample?

19 A. It was physically held in there by the dust  
20 and the -- some moisture.

21 Q. How far from the top of the tank where you  
22 were taking the sample down to the level of  
23 material in the tank was it?

24 A. In feet?

25 Q. Yes.

1 A. So how far down was the -- how far empty  
2 was --

3 Q. How far from you?

4 A. Approximately maybe two feet, three feet; two  
5 feet.

6 Q. Was there any indication -- about how much  
7 sample was contained in the tube, how much  
8 vertical distance up the tube was filled with  
9 material when you withdrew it from the tank?

10 A. Two and a half feet, approximately. I'd have  
11 to look at the photograph to refresh my  
12 memory. Two feet.

13 Q. Do your notes reflect what that vertical  
14 distance would be?

15 A. I don't recall. My notes do not, no.

16 Q. Do you know of any other notes that would  
17 reflect that?

18 A. Notes, I'm not sure. There might have been  
19 some of the other employees' notes that -- the  
20 photographs reflect it.

21 - - - -

22 (Thereupon, a one-page 'United States  
23 Environmental Protection Agency Region V'  
24 memorandum to William Muno from Joseph J.  
25 Fredle, dated February 9, 1987; attached

1 five-page 'American Steel Foundries, Alliance,  
2 Ohio, RCRA Sampling Inspection' report, were  
3 marked for the purpose of identification as  
4 Defendant's Exhibit 14.)

5 - - - -

6 Q. You have a document that's been marked as  
7 Defendant's Number 14. Have you seen this  
8 document before?

9 A. I have, yes.

10 Q. What is it?

11 A. It's a United States Environmental Protection  
12 Agency Region V memorandum.

13 Q. What is the subject of this memorandum?

14 A. As the memo states, it's the August 1986 RCRA  
15 sampling inspection at American Steel  
16 Foundries, Alliance, Ohio.

17 Q. Who prepared this memorandum?

18 A. The memorandum -- I could only assume it was  
19 Joe Fredle. It says it was from Joe Fredle.  
20 I don't know if anyone else participated.

21 Q. Did you receive this memorandum?

22 A. Yes, I did.

23 Q. If you could take a moment or two to read  
24 through this memorandum, please?

25 A. Parts of the cover are not legible.

1 MR. SCHILLAWSKI: I will state  
2 for the record that as produced, parts of the  
3 cover were not legible.

4 MS. SUTULA: Off the record.

5 - - - -

6 (Thereupon, a discussion was had  
7 off the record.)

8 - - - -

9 A. The original should be in our files. It  
10 should be.

11 Q. Does the document which has been marked as  
12 Defendant's Number 14 indicate a description  
13 of the sampling inspection of American Steel  
14 Foundries on August 6th and 7, 1986?

15 A. I'd have to look at it, examine it more  
16 closely to make sure there weren't any facts  
17 that I disagreed with.

18 Q. Could you please do so?

19 A. I think I'd also have to refer to other  
20 materials to be sure that all these facts are  
21 correct, materials I don't have.

22 Descriptions of the site acreage, I'm not  
23 sure if the company manufacture --  
24 manufactures castings for other people.

25 I do not necessarily agree with all the

1           wording here. In fact, the first sentence of  
2           the second paragraph "The purpose of this  
3           sampling inspection was to determine if waste  
4           generated and disposed of by this facility at  
5           its Mahoning County landfill," the waste was  
6           not generated at the landfill, so I would say  
7           I don't agree with everything as written on  
8           this document.

9   Q.       Let's go through the document a little bit and  
10           find out what there is in it that you have  
11           problems with.

12                   MS. SUTULA: I'm going to  
13           object. She's testified she would have -- to  
14           know for sure, she would have to look at other  
15           documents. In the interest of time, I would  
16           expect you to go right to the part that you  
17           are really interested in and ask her if that  
18           refreshes her memory.

19                   MR. SCHILLAWSKI: All right.  
20           We'll start doing that here with the  
21           reservation of going back through it at a  
22           later time.

23   Q.       If I could direct your attention to the last  
24           paragraph on the page that's headed "American  
25           Steel Foundries, Alliance, Ohio," the page

1           that you are on right now. The last sentence  
2           of the paragraph that's on this page, would  
3           you please read that and as it continues on to  
4           the page that's numbered two, and tell me  
5           whether that refreshes your recollection with  
6           regard to the core sample?

7   A.       What specifically, the amount of material or  
8           the -- following the truck, the Lexon tube  
9           size?

10   Q.       The sentence that begins "Before being dumped  
11           a core of the top --"

12   A.       It refreshes my memory toward -- what do you  
13           want me to say?

14   Q.       What was the vertical --

15                       MS. SUTULA:     Ask me that  
16           question, not him.

17                       THE WITNESS:    I heard you  
18           snickering, Kathy.

19   A.       I don't understand your point, or, your  
20           question.

21   Q.       How much vertical distance of material in the  
22           tube was present in the tube when you withdrew  
23           it from the truck?

24   A.       The -- this report states that "The top ten to  
25           12 inches of the load was taken in a two inch



1 diameter plastic tube; eight to ten inches of  
2 this material all appeared to be dry EAF  
3 dust. The bottom two inches was damp EAF  
4 dust." It appears a total of ten to 12 inches  
5 of material per this report was collected in  
6 the Lexon tube.

7 Q. Do you have an independent recollection of the  
8 vertical distance of material that was  
9 contained in the two inch tube when it was  
10 withdrawn from the truck?

11 A. Yes.

12 Q. What was that?

13 A. I gave it to you already. I believe I said  
14 two feet, two and a half feet; two, three.

15 Q. Do you therefore disagree with the description  
16 of this core sampling that is contained in  
17 this --

18 A. No, I don't.

19 Q. -- memorandum?

20 A. I don't. I feel this is consistent.

21 Q. Is the description contained in this  
22 memorandum accurate?

23 A. I believe it is accurate. As I stated, part  
24 of the sampling inspection was the collection  
25 of photographs, and the photographs will also

1 give you an indication of vertical distance of  
2 material in the Lexon tube.

3 There was a sampling tag, which is a  
4 standard tag U.S. EPA uses, that was held up  
5 next to the Lexon tube to give us a distance,  
6 approximately, and if I had that tag in front  
7 of me and that photograph in front of me and a  
8 ruler, I could give you the proportion and how  
9 much material was in that tube.

10 Q. Can we -- we'll leave that for a bit since  
11 we'll be back here tomorrow. Was the core  
12 sample -- well, first of all, what was the  
13 sample number for the core of the load?

14 A. Can I refer to the chain of custody?

15 Q. Certainly. Whatever you need.

16 A. Well, S14.

17 Q. Was S14 split with American Steel Foundries?

18 A. I believe that was the one sample that was not  
19 split with American Steel Foundries.

20 Q. Why not?

21 A. That material was collected in that tube to  
22 give us a visual idea of what the material  
23 looked like in the tank. It was not  
24 originally intended to be a means of  
25 collecting material that would later be

1 analyzed for constituents. After realizing  
2 that we had a -- would have an extra sample in  
3 our allocation available, we decided to  
4 collect -- or, to use that material for a  
5 sample. There was not enough material to  
6 split the sample and share it with American  
7 Steel Foundries.

8 There's a limit or a minimum quantity  
9 required by our laboratory for this analysis.  
10 That situation was explained to the American  
11 Steel Foundry personnel who were at the site,  
12 and there was no objection to not splitting  
13 that sample.

14 Q. Did they request that the sample be split with  
15 them?

16 A. They did not. There was no objection stated  
17 by American Steel Foundries' personnel at the  
18 time.

19 Q. How much volume did the sample, S14, contain?

20 A. I don't recall exactly. It was enough for the  
21 one analysis.

22 Q. Was there any reason that you could not have  
23 done another core sample and composited the  
24 two to get enough sample to split?

25 A. There was no reason that that could not have

1           been done, but again, it was decided after the  
2           fact to use that material as a sample. It was  
3           not decided at the time that the truck was  
4           available to collect another sample. If we  
5           had known that we were going to use it as a  
6           sample, we would have done that to provide a  
7           split to American Steel Foundries.

8       Q.    Do you recall any conversation with American  
9           Steel Foundries regarding questions that you  
10          had at the time you used the core to make up  
11          sample S14, as to whether there would be  
12          sufficient volume even in your retaining all  
13          of the material for it to be analyzed by your  
14          laboratory?

15   A.    What's the question? I'm sorry.

16   Q.    Did you have any question whether there would  
17          be enough volume from the core sample to make  
18          up enough volume for your lab to analyze as a  
19          sample?

20   A.    I believe there was -- it was very close to  
21          the minimum amount that we needed.

22   Q.    Did you have any discussion with American  
23          Steel Foundry people regarding that?

24   A.    I remember discussing it with an American  
25          Steel Foundry employee, that we would not be

1           able to split the sample. I don't recall  
2           discussing anything else with American Steel  
3           Foundry employees.

4   Q.    What was the next sample that was taken from  
5           the material contained in the roll-off tank  
6           that had the electric arc furnace dust and  
7           sand/slurry in it at the landfill?

8   A.    Well, again, that first material was not  
9           collected as a sample. It was decided later  
10          to be collected, to be used as a sample.

11 Q.    Did you take other samples from the truck?

12 A.    From the top of the truck?

13 Q.    Of the contents of the truck.

14 A.    Yes.

15 Q.    What was the next -- excuse me, what was the  
16          next physical removal of material from the  
17          truck that was used as a sample?

18 A.    Material that came out the back end of the  
19          truck.

20 Q.    What was the procedure which was used to take  
21          that material?

22 A.    To collect a sample of the material?

23 Q.    Yes.

24 A.    A quart jar was attached to an end of a rod  
25          and extended out behind the back of the truck

1 at a distance that allowed it to be safe for  
2 U.S. EPA personnel.

3 Q. What is the sample number that reflects the  
4 next material that was taken from the truck?

5 A. S13.

6 Q. Can you describe the procedure that was used  
7 to make up sample S13? Was that the first  
8 quart jar that you took from the truck?

9 A. Well, technically the first material that  
10 became a sample was the stuff out of the core  
11 from the top.

12 Q. The first sample that was not taken as a core  
13 from the top was S13; is that correct?

14 A. Yes, and that's what is indicated in the  
15 sample report that it's the first half of the  
16 dump.

17 Q. Was that sample the first quart jar that was  
18 taken while the truck was dumping <sup>W</sup>that you  
19 previously discussed?

20 A. As I recall, yes. There may have been a jar  
21 that could have gotten broken. I know we had  
22 some difficulty collecting samples.

23 Q. Isn't it true that when the truck dumped --  
24 you took five separate jars of material during  
25 the process of dumping the truck?

1 A. And composited them?

2 Q. Yes.

3 A. I'd have to review the inspection report to  
4 refresh my memory.

5 Q. Is the inspection report what was identified  
6 as Defendant's 14, Exhibit 14?

7 A. Yes.

8 Q. Could you please refresh your recollection?

9 A. Do you want me to read the report?

10 Q. I'd like you to refresh your recollection.

11 A. Okay, I've read it.

12 Q. Isn't it true that you took five separate  
13 quart jars during the process of dumping of  
14 the truck, and that S13 was a composite of the  
15 first two of those jars?

16 A. Yes. You asked me about the first jar  
17 previously.

18 Q. Right.

19 A. Okay.

20 Q. I did.

21 A. So what's the question?

22 Q. Is the actual fact that you took five separate  
23 jars of material through the period when  
24 material was being dumped from the truck and  
25 that the first two of these jars were

1            composited to make sample S13?

2        A.        That is what I recall, and that is what the  
3            inspection report says.

4        Q.        Do your notes contain a description of that  
5            procedure?

6        A.        I don't recall.

7        Q.        Could you refresh your recollection?

8        A.        Again, my notes weren't -- were not the  
9            primary notes for the sampling, but rather  
10          just my personal notes.    Would you like me to  
11          read my notes?

12      Q.        Can you just answer whether they contain a  
13            description of the procedure that was used to  
14            make S13?

15      A.        The procedure, it talks about compositing the  
16            samples.    It doesn't say how they were  
17            composited, so it does not discuss the  
18            procedure.

19      Q.        Was a stopwatch or other timing device used in  
20            the procedure for taking the five separate  
21            jars of material while the truck was dumping?

22      A.        A stopwatch used for something, no.  
23            Stopwatches are not standard sampling  
24            equipment.

25      Q.        How did you know when, during the process of



1 dumping the truck, to take the five individual  
2 jars of material that were taken?

3 A. How did we know when to collect the samples?

4 Q. Yes.

5 A. They were grab samples taken during  
6 intermediate points of the dump.

7 Q. Did you have any procedure prior to the  
8 dumping that you used to determine at what  
9 intermediate points in the dump you would be  
10 taking samples?

11 A. It was discussed, is that what you mean?

12 Q. What was the result of that discussion that  
13 you had?

14 A. That all these samples would be collected.

15 Q. Did you have a procedure as to at what point  
16 in the dump they would be collected?

17 A. No. It was a -- again, they were grab  
18 samples, which is significant, and in that we  
19 have never collected samples out of the truck,  
20 this was some of this -- some of these  
21 decisions were made in the field which is  
22 often done with sampling.

23 Q. Was any random number generated or random  
24 number table used in determining when to take  
25 those five samples during the process of the

1 dump?

2 A. No, the samples -- often the collection of the  
3 samples are determined on the rate that the  
4 truck driver was dumping the load.

5 Q. Did you have control over that rate?

6 A. We did not. The truck driver did.

7 Q. Did you make any requests to the truck driver  
8 or any other ASF personnel as to what that  
9 rate would be?

10 A. I requested that they did not dump the entire  
11 load at one time.

12 Q. Did you make requests during the process of  
13 the dump as to the rate at which the dump  
14 would be carried out?

15 A. No, not to the rate.

16 Q. Was S13 split with American Steel Foundries?

17 A. I believe so. The sample report indicates  
18 that it was split.

19 Q. What was the next sample after S13 that was  
20 taken?

21 A. S12.

22 Q. How was that sample taken?

23 A. In a similar fashion.

24 Q. Can you describe what the fashion was of  
25 taking S12?

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1 belt, a rope was tied around that person -- to  
2 that safety belt and the person walked down  
3 into the pit of the landfill and collected a  
4 sample.

5 Q. Is it true that the material that was taken as  
6 sample S11 was a small quantity of what  
7 appeared to be dry dust that floated out of  
8 the end of the dump?

9 A. It was material that -- that was on top of the  
10 material that had landed in the pit.

11 Q. Who made the decision to take that material as  
12 a sample?

13 A. I directed the technician to collect the  
14 sample. I'm sure there was some input from  
15 Joe Fredle also.

16 Q. How much material was there of which the  
17 sample S11 was taken as a part?

18 A. I don't recall.

19 Q. Do your notes, after the entry S11, which  
20 contain the words "very little" refresh your  
21 recollection as to how much material there  
22 was?

23 A. I'm not sure what that refers to.

24 Q. Do you have an independent recollection of how  
25 much volume there was?

1 A. Of the dry material versus wet material?

2 Q. Yes.

3 A. At that point what was left in the pit, there  
4 was more wet than dry, that's my  
5 recollection. The photographs would also give  
6 an indication.

7 Q. Is it true that you decided to take sample S11  
8 of that material that floated out of the end  
9 of the dust dump because it was dry?

10 MS. SUTULA: Objection. I don't  
11 think she's testified to that. I object to  
12 the form of your question.

13 Q. Was the material from which S11 was taken as a  
14 sample dry?

15 A. As I recall, yes, it was dry.

16 Q. Was your decision to take a sample of the  
17 material from which S11 was taken as a sample  
18 made because that material was dry?

19 A. It was influenced by that, that it was  
20 different than other material that had been  
21 dumped, yes. It was an indication that not  
22 all material became mixed in that dumping.

23 Q. Was the dry material a majority of the  
24 material that was dumped?

25 A. I believe I answered that question already.



1 Q. I don't believe you did. Was it?

2 A. Most of the material was wet, I believe that's  
3 what I said in the answer to the previous  
4 question.

5 Q. What percentage of the total volume of  
6 material that was dumped from the tank was dry  
7 material of which S11 was composed?

8 A. At what point; in the truck?

9 Q. After -- during or after the dump of the  
10 material.

11 A. That's difficult to say because there was also  
12 other water to -- groundwater in the pit.  
13 That pit is open to groundwater levels, so  
14 there was -- some of it could have become wet  
15 upon being dumped into the hole, so at that  
16 point, it's hard to judge what became wet  
17 because of the dumping or what became wet  
18 because it was dumped into water.

19 Q. Did you observe the materials which were  
20 dumped from the truck during the entire  
21 process of it being dumped?

22 A. I may have looked away for a moment, but I  
23 recall that I was observing the entire  
24 dumping. I may have looked down at my  
25 clipboard to write notes.

1 Q. Could you tell of what material being dumped  
2 was dry and what was wet?

3 A. Some of it appeared dry, some appeared wet.  
4 There is also some material thrown into the  
5 air, into a cloud form.

6 Q. Do you recall what the material at -- do you  
7 recall what the material at the end of the  
8 load, which was dry and of which S11 was taken  
9 as a sample, what volume that material was?

10 A. That remained dry, even though it had been  
11 dumped into the wet pit?

12 Q. Do you recall what volume it was that was dry  
13 when it was dumped?

14 A. After it was dumped or before it was dumped?

15 Q. While it was being dumped, while it came out  
16 of the truck.

17 A. I don't recall.

18 Q. How much of it was dry after it had been  
19 dumped?

20 A. Percentage on volume or weight?

21 Q. Yes.

22 A. Volume?

23 Q. Yes.

24 A. Because there were no volume measurements of  
25 the amount of liquid or dust put into the

1 truck by either U.S. EPA or the American Steel  
2 Foundries' employees, I can't say.

3 Q. Was the amount of dry material which you  
4 observed coming out of the truck during the  
5 dump more than half of the total volume which  
6 you observed coming out of the truck or less  
7 than half?

8 A. Some of it was, again, gone into the air, and  
9 by volume, there was more liquid placed into  
10 the truck on that particular trip, so I would  
11 say logically since there was originally more  
12 water or liquid, moist material, that it  
13 couldn't be greater at the landfill.

14 MR. SCHILLAWSKI: Well, we have  
15 reached five o'clock.

16 MS. SUTULA: Is this a convenient  
17 place for you to stop?

18 MR. SCHILLAWSKI: I'm not sure  
19 we're going to reach a convenient place within  
20 the next 15 to 20 minutes.

21 MS. SUTULA: If you would like to  
22 go on, continue your questioning.

23 A. ~~Tell me quick~~, are we going on?

24 Q. We're going on.

25 MS. SUTULA: For 15 minutes.

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1 material was removed from the Lexon tube and  
2 then transferred into the quart jar.

3 Q. Okay, thank you. Why did you decide to take  
4 S14 as a sample besides the fact that you had  
5 an extra sample jar left?

6 A. We wanted to find out what the constituents of  
7 the material were and we had one more sample  
8 allocation.

9 Q. Isn't it true that S14 was taken as a sample  
10 because it was dry?

11 MS. SUTULA: Objection.

12 A. That's not the reason the sample was taken.  
13 It was taken because it was waste material  
14 removed from the truck.

15 Q. What reason was used to determine that S14  
16 would be taken as a sample rather than say the  
17 middle jar of the five that were removed  
18 during the dump of the truck?

19 MS. SUTULA: Objection.

20 A. As I previously stated, that sample was  
21 collected because the material in the waste  
22 pit looked different than other material that  
23 had already been dumped in the pit.

24 Q. We're referring to S14 now and not S11. Was  
25 S14 taken as a sample because it appeared



1 different than the other material that had  
2 been dumped from the truck?

3 A. S14 was collected for the reason I stated, to  
4 find out what the chemical constituents of  
5 that material was that was extracted from the  
6 truck.

7 Q. Was the decision to take that as a sample  
8 based in any part on the fact that it was  
9 different in appearance from the other  
10 material that was present in the truck?

11 MS. SUTULA: Objection.

12 A. It appeared -- from looking from the top part  
13 of the truck, it appeared that the majority of  
14 the material floating on the top layer was  
15 this dry material, so different from what;  
16 different from liquid, yes, different from  
17 other dry material in the truck, no.

18 MR. SCHILLAWSKI: I think we have  
19 gotten to a convenient stopping point.

20 - - - -

21 (Thereupon, the deposition was adjourned  
22 for the day.)

23 - - - -

24 FRIDAY, NOVEMBER 3, 1989

25 CONTINUED EXAMINATION OF CATHERINE A. MCCORD

1 BY MR. SCHILLAWSKI:

2 Q. Mrs. McCord, what procedure was used to label  
3 the jars which contained samples S11 through  
4 S14?

5 A. The same standard method that was used to  
6 label the other jars.

7 Q. What was that?

8 A. Standard field method is to -- once the jar is  
9 closed and cleaned, to attach a tag around the  
10 collar of the jar, tying it with a piece of  
11 string. *The tag may also be placed*

12 Q. *on jar prior to adding sample*  
That tag is only attached by that piece of  
13 string?

14 A. In this particular case?

15 Q. Yes.

16 A. I believe so. That is standard field  
17 practice.

18 Q. And there was no other mechanism in the knot  
19 in the string to hold the sample label on the  
20 jar?

21 A. I believe that's true.

22 Q. What information was written on the labels of  
23 the sample jars?

24 A. I don't have a copy of the label in front of  
25 me. Standard information is time of sample, a

1 physical description and the sample number and  
2 then the sample collector. *date + time*

3 Q. Are copies of the sample labels kept?

4 A. No, they are not. They are shipped when the  
5 samples are shipped from the field.

6 Q. Is it standard procedure for EPA to retain  
7 copies of sample labels in files either at the  
8 laboratory that analyzes the samples or in the  
9 case files for the entity being sampled?

10 A. I don't know. I believe that they keep the  
11 sam -- a copy of the labels.

12 Q. Did you help prepare the answers to written  
13 discovery requests that were submitted to the  
14 United States by American Steel Foundries?

15 A. I was involved in the preparation.

16 Q. Do you recall seeing copies of the sample  
17 labels which were taken from the August 6th  
18 and 7th sampling during your preparation --

19 A. I don't -- I don't recall that, no. I was not  
20 involved with all aspects of discovery  
21 preparation.

22 Q. I believe you testified earlier that you took  
23 sample S14 as a core from the top of the truck  
24 containing electric arc furnace dust and  
25 sand/slurry; is that correct?

- 1 A. That's correct.
- 2 Q. You were on top of the truck?
- 3 A. That's correct.
- 4 Q. When you did that, were you kneeling on the
- 5 top of the truck when you took the sample?
- 6 A. Yes.
- 7 Q. Did you put your arm inside the truck when you
- 8 were taking that sample?
- 9 A. Yes.
- 10 Q. How far down did you put your arm?
- 11 A. I don't recall.
- 12 Q. Did you end up lying on top of the truck in
- 13 the process of taking that?
- 14 A. I was never lying on top of the truck, no, not
- 15 that I recall.
- 16 Q. The jars that contain samples S11 through S14
- 17 were sealed with a screw top lid; is that
- 18 correct?
- 19 A. That's the standard fashion in which the glass
- 20 jars are closed.
- 21 Q. There was no individual custody seal that was
- 22 placed on samples S11 through S14; is that
- 23 correct?
- 24 A. S11 through S14 samples were treated as all
- 25 other samples were treated.

1 Q. Did you put individual custody seals on any of  
2 the individual samples?

3 A. Standard practice is to put the custody seal  
4 on the cooler because ice is placed into the  
5 cooler. It is not standard practice to  
6 custody seal each jar.

7 Q. The individual jars that were taken during the  
8 August 6th and 7th sampling were not  
9 individually sealed, correct?

10 A. That's what I said. The cooler is custody  
11 sealed.

12 Q. How were the samples preserved?

13 A. At four degrees centigrade.

14 Q. How was that done?

15 A. By placing ice in the cooler.

16 Q. How many coolers were used?

17 A. I don't recall.

18 Q. Would the chain of custody documents help you  
19 refresh your recollection?

20 A. I'm not sure.

21 Q. Could you see?

22 A. What exhibit number is that?

23 Q. I'm not sure I remember it. It's close to the  
24 start.

25 MS. SUTULA: It's number 12.

1 MR. SCHILLAWSKI: My memory is  
2 fallible, I guess.

3 A. The chain of custody records indicate that two  
4 chain of custody seals were used, that to me  
5 indicates there were two coolers, one used  
6 for -- I'm sorry, that there were two coolers.

7 Q. Did you observe these coolers being sealed?

8 A. I don't recall.

9 Q. What information was contained on the cooler  
10 seal?

11 A. I don't recall.

12 Q. Was the cooler -- were both of these coolers  
13 retained in your custody at any time following  
14 the placement of the samples in it?

15 A. In my custody?

16 Q. Yes.

17 A. No.

18 Q. Who had custody of the cooler?

19 A. Joe Fredle and the other U.S. EPA employees.

20 Q. There was no official log book that was kept  
21 of this sampling, was there?

22 A. Official log book?

23 Q. Yes.

24 A. No, not that I know of. Log book, there is no  
25 book. There were other notes from other EPA

1 personnel.

2 Q. Was there any bound volume which contained  
3 notes of other U.S. EPA personnel?

4 A. I don't know what bound -- if other EPA  
5 employees were carrying bound volumes.

6 Q. What laboratory analyzed samples S11 through  
7 S14?

8 A. I'm not certain. I believe the samples were  
9 sent -- all samples were sent to the United  
10 States Environmental Protection Agency, Region  
11 V central regional laboratory in Chicago.

12 Q. How were the samples delivered to the  
13 laboratory for analysis?

14 A. Again, I was not involved with the process  
15 after the samples were removed from the site,  
16 but the chain of custody form, Exhibit 12,  
17 indicates that they were sent by priority.

18 Q. What do you mean by "sent by priority"?

19 A. I'm reading off the chain of custody form.  
20 The form also indicates that the samples were  
21 received by Airborne. To me this indicates  
22 that Airborne Express shipped the samples for  
23 U.S. EPA.

24 Q. Is it correct that only samples S11 and S14 of  
25 the samples that you took on August 6th and

1 7th reflect any samples of materials which  
2 tested EP toxic, which were taken at the  
3 Sebring landfill?

4 A. Could you repeat the numbers?

5 Q. S11 and S14.

6 A. I don't have the analytical results in front  
7 of me, but that is -- that is my recollection,  
8 that those were the only samples collected  
9 from the landfill that were EP toxic.

10 Q. Does Mr. Fredle's inspection report contain  
11 analytical results?

12 A. Yes, it does.

13 Q. Would that refresh your recollection?

14 A. It would.

15 Q. Will you please refer to that?

16 A. And what exhibit number is that?

17 MS. SUTULA: It's 14.

18 A. The sampling inspection report indicates that  
19 of the samples collected at American Steel  
20 Foundries landfill, that S10 and S14 are the  
21 EP toxic samples.

22 Q. S10 was not in fact a sample taken at the  
23 landfill, was it?

24 A. I believe that's correct. That is the EAF  
25 dust at the production facility. I'm sorry.



1 S11 and S14.

2 Q. S11 and S14 therefore are the only samples  
3 taken at the landfill which show EP toxic  
4 results, correct?

5 A. They are the samples that show EP toxicity  
6 concentrations are exceeded.

7 Q. There were not any other samples taken at the  
8 landfill which show EP toxicity concentrations  
9 which exceed the --

10 A. Other than by U.S. EPA or anyone?

11 Q. Collected by you in this sampling inspection.

12 A. Could you repeat the question?

13 Q. S11 and S14 are the only samples taken by U.S.  
14 EPA on the August 6th and 7, 1986 sampling  
15 inspection at the Sebring landfill, which show  
16 EP toxicity results, correct?

17 A. That is correct.

18 Q. There were no samples taken from the inside of  
19 the truck which was used to transport the  
20 electric arc furnace dust and sand/slurry from  
21 the Alliance facility to the landfill while  
22 that truck was at the Alliance facility; is  
23 that correct?

24 A. There were no samples collected by U.S. EPA  
25 from the truck at the Alliance facility.

1 MR. SCHILLAWSKI: Can we go off  
2 the record for a second?

3 - - - -

4 (Thereupon, a discussion was had  
5 off the record.)

6 - - - -

7 Q. Mrs. McCord, I am going to be reading a  
8 paragraph which is contained in the Complaint  
9 filed in this action by U.S. EPA, paragraph  
10 15, "Based upon the inspection of the Alliance  
11 and Sebring facilities by Ohio EPA and the  
12 U.S. EPA, the United States has determined  
13 that the defendant generates hazardous waste  
14 at the Alliance facility, treats this waste  
15 ineffectually and without authorization and  
16 unlawfully transports this hazardous waste to  
17 the Sebring facility for disposal."

18 Mrs. McCord, you do not know of any  
19 sample results, other than the results of  
20 samples S11 and S14, which were taken on  
21 August 6th and 7th of 1986, which show any  
22 hazardous characteristic of any material at  
23 Sebring landfill; is that correct?

24 A. Those are the samples that I have knowledge of  
25 from this sampling event.

1 Q. Do you have knowledge of any samples from any  
2 other sampling event at the Sebring landfill,  
3 which demonstrates hazardous characteristics?

4 A. No.

5 Q. Therefore, to the extent of your knowledge,  
6 the only samples which U.S. EPA has, which  
7 supports the allegations that American Steel  
8 Foundries treats this waste ineffectually and  
9 unlawfully transports this hazardous waste to  
10 the Sebring facility for disposal are S11 and  
11 S14 that you took on August 7, 1986?

12 A. Those samples in addition to the splits of  
13 those samples that were given to American  
14 Steel Foundries.

15 Q. S14 was not split with American Steel  
16 Foundries?

17 A. That's correct; I was mistaken, that's  
18 correct. S11 was split with American Steel  
19 Foundries.

20 Q. Are there any other sample results which you  
21 consider to demonstrate that hazardous wastes  
22 were actually disposed of in hazardous form at  
23 the Sebring landfill?

24 A. Personal observation that the material was not  
25 thoroughly mixed and then dumped.

1 Q. What sampling result are you referring to that  
2 was taken at Sebring --

3 A. I did not know your question was restricted to  
4 analytical results.

5 Q. I'm speaking of analytical results of samples  
6 which were taken.

7 A. We have discussed the samples that show that  
8 the material was ineffectually treated.

9 Q. Is that only S11 and S14?

10 A. That's correct.

11 MR. SCHILLAWSKI: Off the record  
12 for a bit here.

13 - - - -

14 (Thereupon, numerous photographs were  
15 marked for the purpose of identification as  
16 Defendant's Exhibits 15 through 42,  
17 inclusive.)

18 - - - -

19 (Thereupon, photocopies of  
20 photographs were marked for the purpose of  
21 identification as Defendant's Exhibits 43 and  
22 44.)

23 - - - -

24 Q. Mrs. McCord, I'm handing you a set of  
25 photographs that have been marked Defendant's

1 Exhibits 15 through 42. Could you please look  
2 through them? You may wish to kind of lay  
3 them out in front of you, so we can refer to  
4 them as we go along.

5 Now, Mrs. McCord, are the photographs  
6 which have been marked as Defendant's 15  
7 through 42, were they photographs that were  
8 taken during the August 6th and 7, 1986  
9 sampling inspection at American Steel  
10 Foundries?

11 A. I believe so. There's a few photographs that  
12 could have been taken at other times, but  
13 because there aren't personnel in the  
14 photographs, it's hard to say. I believe all  
15 these photographs, the majority of them are  
16 from that sampling inspection.

17 Q. Would you please identify those photographs by  
18 the exhibit number that you are not sure were  
19 taken during the August 6th and 7th sampling  
20 inspection?

21 A. I'd like to change my response. I believe  
22 that these all were taken at that time. I  
23 believe they were.

24 Q. Are the photographs, Exhibits 15 through 42,  
25 accurate representations of the appearance of

1 the scenes contained in the photographs?

2 A. Yes.

3 MR. SCHILLAWSKI: Mrs. Sutula,  
4 can I get a stipulation that what's been  
5 marked as Defendant's Exhibit Number 43 is a  
6 true and correct photocopy of a photograph  
7 which was marked as Defendant's Exhibit Number  
8 6 in the deposition of Mr. Patton on February  
9 16, 1989?

10 MS. SUTULA: No, it's a true and  
11 correct photocopy of the photograph that was  
12 marked as Defendant's Exhibit Number 5 in that  
13 deposition. If you are going to question this  
14 witness regarding this, however, I would ask  
15 that you also let her see the original of this  
16 photograph.

17 MR. SCHILLAWSKI: Certainly.

18 Can we have a stipulation that  
19 what's been marked as Defendant's Exhibit  
20 Number 44 is a true and correct photocopy of a  
21 photograph that was marked as Defendant's  
22 Exhibit Number 6 in the February 16, 1988  
23 deposition of Mr. Patton?

24 MS. SUTULA: February 16, 1989  
25 you mean, deposition of Mr. Patton, and I

1           would also ask that you show her the original  
2           photograph if you're going to question her  
3           from it.

4                       MR. SCHILLAWSKI:     Yes.

5   Q.       Now, Mrs. McCord, if we can start with the  
6           first marked exhibit, which is Defendant's  
7           Number 15, what does that photograph  
8           represent?

9   A.       A truck dumping material.

10  Q.       Do you recall when that photograph was taken?

11  A.       I believe that photograph was taken during the  
12           sampling inspection.

13  Q.       Do you recall at what time during the sampling  
14           inspection that was taken, in sequence?

15  A.       Are these photographs in sequence?

16  Q.       I do not know.

17  A.       I don't recall specifically what time this  
18           photograph was taken.

19  Q.       Does the truck that is represented in that  
20           photograph, the truck that was used to dispose  
21           of the electric arc furnace dust and  
22           sand/slurry mixture?

23  A.       No.

24  Q.       If we can move on to Number 16, what does that  
25           photograph represent?

1 A. Appears to be the same truck dumping waste  
2 material at the landfill.

3 Q. Would that photograph have been taken at  
4 approximately the same time as Exhibit 15?

5 A. Yes.

6 Q. Move on to number 17, what does that  
7 photograph represent?

8 A. This is a photograph of the pit inside the  
9 landfill showing water and drums and other  
10 waste materials.

11 Q. Do you know at approximately what time that  
12 photograph would have been taken?

13 A. No. This photograph is not marked.

14 Q. Moving on to number 18, what does that photo  
15 represent?

16 A. I believe this is a photograph of the front  
17 end of an American Steel Foundries' truck at  
18 the landfill facility.

19 Q. Do you know when, approximately, that  
20 photograph would have been taken?

21 A. No. Again, the photograph is not marked and  
22 without the notes in front of me, I do not  
23 know what time it was taken. I could give you  
24 an approximation, if I was allowed to review  
25 my -- the exhibit which included my notes.



1 Q. Certainly.

2 A. I believe that the truck depicted in Exhibits  
3 15 and 16 dumped that material at  
4 approximately 9:50 a.m. on August 6, 1986.

5 Q. Do your notes refresh your recollection as to  
6 when Exhibit Number 17 would have been taken?

7 A. I don't recall. My notes do not -- if the  
8 photographs are in sequence, it would be  
9 sometime after that, after ten a.m.

10 Q. Do your notes refresh your recollection as to  
11 Exhibit Number 18, as to the time of the  
12 taking?

13 A. My notes do not, but I did not -- those  
14 photographs were not from my camera. The  
15 person taking the pictures may have that  
16 information.

17 Q. Moving on to Exhibit Number 19, can you tell  
18 me what that photo represents?

19 A. This is a photograph of an American Steel  
20 Foundries' portable container or truck, tank  
21 truck, that appears to be located at the  
22 American Steel Foundries' landfill.

23 Q. Is that tank truck the tank truck which was  
24 used to contain the electric arc furnace dust  
25 and sand/slurry?

1 A. It is a photograph of the truck that is  
2 typically used to transport that waste  
3 material to the landfill.

4 Q. Do you know what time that photograph was  
5 taken?

6 A. No, I do not.

7 Q. Moving on to Exhibit Number 20, can you tell  
8 me what this exhibit represents?

9 A. Appears to be a picture of the sky.

10 Q. Is there anything else that appears to be  
11 represented in that photo?

12 A. Other than it appears that someone mistakenly  
13 opened the shutter while the camera was  
14 pointed towards the sky.

15 Q. Thank you.

16 Moving on to Number 21, can you tell me  
17 what that photograph represents?

18 A. It's a photograph of a -- what I believe is  
19 Mike Patton, U.S. EPA sampling technician, who  
20 appears to be compositing a sample within a  
21 pan.

22 Q. Do you know approximately what time that photo  
23 would have been taken?

24 A. No, I do not.

25 Q. We can move on to the next one, Number 22.

1 Can you tell me what that photo represents?

2 A. It is a photograph of a truck, which appears  
3 to be in other photographs, earlier exhibits,  
4 that is dumping material, waste material at  
5 the American Steel Foundries Sebring  
6 landfill. Also in the photograph is a picture  
7 of the back of a U.S. EPA person in addition  
8 to a car.

9 Q. Was the truck that is represented there, the  
10 truck that was in Numbers 15 and 16?

11 A. I believe so.

12 Q. If we can move on to the next exhibit, Number  
13 23, can you tell me what that represents?

14 A. Similar picture to the previous exhibit taken  
15 either just before or just after.

16 Q. If we can move on to the next exhibit, Number  
17 24, can you tell me what that represents?

18 A. That is a photograph of an American Steel  
19 Foundries' truck dumping liquid type material  
20 into the landfill. In addition, there is a  
21 sampling device which is extended out behind  
22 the back end of the truck.

23 Q. Do you know at approximately what time that  
24 photo would have been taken?

25 A. I believe sometime during the collection of

1 samples of material from the truck,  
2 sometime -- I'll look at the chain of  
3 custody. I'm going to refer to the chain of  
4 custody form, Exhibit 12. Sometime on the --  
5 as indicated by the chain of custody form,  
6 that photograph was taken sometime on the 7th  
7 of August, somewhere between 1414 and 1420  
8 p.m.

9 Q. Are there numerals which are contained in the  
10 lower right-hand corner of that photo?

11 A. There do appear to be numerals in the lower  
12 right-hand corner of the photograph.

13 Q. What do those numerals represent?

14 A. Numbers imposed by the camera onto the film.

15 Q. Do those numbers represent a date?

16 A. I think that the intention would be that that  
17 would be the date. It does not appear that it  
18 was being used for that purpose.

19 Q. Why does it not appear that that's what it was  
20 being used for?

21 A. Because the numbers 86-8-6 appear in the lower  
22 right-hand corner.

23 Q. That would not be the correct date that this  
24 photo was taken?

25 A. As previously testified, the samples from the

1 rear of the waste truck were collected on  
2 August 7th.

3 Q. Would Exhibit Number 24 be a photograph which  
4 includes a portion of the truck which was used  
5 to contain the electric arc furnace dust and  
6 sand/slurry?

7 A. Yes, that's what I previously testified.

8 Q. We can move on to the next one, Number 25.  
9 What does that represent?

10 A. Exhibit 25 is a photograph of the pit within  
11 the center of the landfill. There is a large  
12 amount of waste material, a large amount of  
13 liquid material flowing across the top, some  
14 vegetation in the background and in the upper  
15 left-hand corner is the very end of the U.S.  
16 EPA remote sampling device.

17 Q. Approximately what time was that photograph  
18 taken?

19 A. Again, within that -- the same time frame  
20 stated previously.

21 Q. Stated previously for the previous exhibit,  
22 number 27?

23 A. No, within the time frame between --

24 Q. Sorry, 24. Let me back up, I will withdraw  
25 the question.

1                   Was that photograph taken within the  
2                   approximate time frame during which the truck  
3                   containing the electric arc furnace dust and  
4                   sand/slurry mixture was being dumped at the  
5                   landfill?

6       A.       Yes.

7       Q.       If we can move on to the next exhibit, Number  
8                   26, can you tell me what that represents?

9       A.       That appears to be a U.S. EPA personnel  
10                  preparing a sample to be deposited into clean  
11                  jars.

12      Q.       Is there a sample label which is attached to  
13                  one of the jars?

14      A.       There appears to be a sample label attached to  
15                  one of the jars.

16      Q.       Is that method of attachment of the sample  
17                  label an accurate reflection from the  
18                  photograph of the method that was actually  
19                  used?

20                               MS. SUTULA:    Objection.

21      A.       A method used for that particular jar?

22      Q.       Yes.

23      A.       It sure appears to, yes.

24      Q.       The jar with the label on it in this  
25                  photograph is empty; is that correct?

1 A. That is correct.

2 Q. Is there any -- let me start this again. Has  
3 the label on that jar been filled out?

4 MS. SUTULA: Objection. The  
5 photograph isn't large enough to distinguish  
6 whether or not the writing on the tag is  
7 pre-printed or has been handwritten on the  
8 label. It appears that there is maybe some  
9 handwriting on the label.

10 Q. If we can move on to the next exhibit, Number  
11 27, can you tell me what that represents?

12 A. A photograph of U.S. EPA personnel with safety  
13 equipment, including an air purifying  
14 respirator. They appear to be homogenizing a  
15 sample within a sampling tray.

16 Q. Do you know approximately what time this  
17 photograph would have been taken?

18 A. Again, I'm not certain of the time because  
19 these photographs are not marked and also  
20 appear to be out of sequence.

21 Q. If we can go back to Number 26, do you know  
22 approximately what time that photograph would  
23 have been taken?

24 A. I have the same response as the previous  
25 question.

1 Q. Move on to Number 28, can you tell me what  
2 that represents?

3 A. It is a photograph of a U.S. EPA person who is  
4 standing on top of waste material with his  
5 face towards the other direction.

6 Q. Do you know approximately what time that photo  
7 would have been taken?

8 A. Again, the photographs are not -- these  
9 duplicates are not marked and the photographs  
10 appear to be out of sequence.

11 Q. If we can move on to the next one, Number 29,  
12 can you tell me what that photo represents?

13 A. It's a photograph of a U.S. EPA personnel  
14 collecting a sample of waste material that had  
15 been dumped at the landfill.

16 Q. Do you know approximately what time that  
17 sample would have been taken?

18 A. I believe that sample was collected sometime  
19 between 10:05 a.m. and 10:30 a.m. on August 6,  
20 1985 -- '86, I'm sorry.

21 Q. Are you able to tell what sample number is  
22 being collected at that point in this photo?

23 A. I believe that would be either sample S-01 or  
24 S-02. My best judgment is that that is sample  
25 S-01.



1 Q. If we can move on to Number 30, can you tell  
2 me what that represents?

3 A. That is a photograph of an American Steel  
4 Foundries truck that appears to be located at  
5 the landfill. The photograph is taken inside  
6 of another car.

7 Q. Do you know approximately what time Number 30  
8 would have been taken?

9 A. I am not certain, but I believe that  
10 photograph was taken at approximately 1400 on  
11 August 7, 1986.

12 Q. Is the truck which is represented in number 30  
13 the truck which was used to take the electric  
14 arc furnace dust and sand/slurry?

15 A. That is the truck that is typically used to  
16 transport that waste material to the landfill.

17 Q. Is that the truck which was sampled on August  
18 7th?

19 A. I believe so, yes.

20 Q. If we can move on to the next photo, Number  
21 31, can you tell me what that represents,  
22 please?

23 A. This is a photograph of a dust collector unit  
24 which is an air purifying device at the  
25 American Steel Foundries production facility

1 in Alliance, Ohio.

2 Q. Is that dust collector unit the electric  
3 furnace baghouse?

4 A. It is not.

5 Q. Do you know which dust collector unit that is?

6 A. No, not offhand.

7 Q. Do you know approximately what time that  
8 photograph would have been taken?

9 A. Approximately sometime in between 1320 and  
10 1425 on August 6, 1986.

11 Q. Can we move on to the next exhibit, Number 32,  
12 can you tell me what that photograph  
13 represents?

14 A. That is a photograph of U.S. EPA personnel in  
15 protective clothing, including an air  
16 purifying respirator. They appear to be  
17 splitting a sample and placing the sample  
18 material into clear glass quart jars.

19 Q. There is a sample label attached to one of the  
20 jars, is there not?

21 A. There appears to be a sample label that is  
22 attached to each of the jars.

23 Q. Is there material in the jars?

24 A. U.S. EPA personnel appears to be splitting the  
25 sample and placing waste material in each of

1 the two jars.

2 Q. So there is material in each of the jars?

3 A. Yes, there is.

4 Q. Do you know approximately what time that  
5 photograph would have been taken?

6 A. Sometime between 1320 and 1440 on August 6,  
7 1986.

8 Q. Move on to the next photo, Number 33. Can you  
9 tell me what that represents?

10 A. This is a photograph that was taken at the  
11 American Steel Foundries landfill. The  
12 photograph is -- the photograph consists of  
13 the solid and liquid materials that had been  
14 dumped into the pit at the landfill.

15 Q. Move on to the next one, Number 34. Can you  
16 tell me what that photo represents?

17 A. This is a photograph of three U.S. EPA  
18 personnel at the Sebring landfill.

19 Q. Do you know approximately what time that  
20 photograph would have been taken?

21 A. Approximately 10 a.m. on August 6, 1986.

22 Q. If we can move on to the next one, Number 35.  
23 Can you tell me what that photo represents?

24 A. This is another photograph of the same three  
25 U.S. EPA personnel in similar position as the

1 previous exhibit.

2 Q. Would that photo have been taken at  
3 approximately the same time as number 34?

4 A. Yes. The photographs appear to be in  
5 sequence.

6 Q. Move on to the next one, Number 36, can you  
7 tell me what that photo represents?

8 A. That's a photograph of the same three U.S. EPA  
9 personnel.

10 Q. Where are they?

11 A. At the American Steel Foundries landfill,  
12 Sebring, Ohio.

13 Q. Would that photo have been taken at  
14 approximately the same time as the previous  
15 two exhibits?

16 A. It appears so, yes.

17 Q. Can you tell me what the photo marked as  
18 Number 37 represents?

19 A. That is a photograph of U.S. EPA personnel at  
20 the Sebring landfill. The photograph also  
21 includes a picture of an American Steel  
22 Foundries' truck that is dumping waste  
23 material at the landfill.

24 Q. Approximately what time was that photo taken?

25 A. Approximately 10 a.m. on the 6th of August.

1 Q. Is the truck which is represented in this  
2 photograph the same truck that is shown in  
3 Exhibits 15 and 16?

4 A. It appears so, yes.

5 Q. Can you tell me what is represented by the  
6 photo marked as Number 38, please?

7 A. It is a photograph of the pit within the  
8 American Steel Foundries' landfill in Sebring,  
9 Ohio. It includes a variety of waste  
10 materials, containers, debris, drums and other  
11 liquids.

12 Q. Do you know approximately what time that  
13 photograph would have been taken?

14 A. Approximately the same time as Exhibits 34  
15 through 36.

16 Q. Can you tell me what the photo marked as  
17 Exhibit Number 39 represents?

18 A. It's a photograph that appears to have been  
19 taken either just before or just after Exhibit  
20 38 of similar waste materials that have been  
21 dumped into the landfill. The material  
22 includes domestic refuse, other material  
23 appears to be industrial wastes, drums,  
24 piping.

25 Q. Did you observe the material which is

1 represented by Exhibits 38 and 39 as it was  
2 being dumped?

3 A. Not all that material, no.

4 Q. Did you observe any of the material in 38 and  
5 39 as it was being dumped?

6 A. I believe the wet reddish looking material on  
7 top was the material that was observed being  
8 dumped into the landfill.

9 Q. Is any of the other material represented in  
10 the photograph, material which you observed  
11 being dumped in the landfill?

12 A. No, I don't believe so.

13 Q. Move on to Number 40. Can you tell me what  
14 that represents, please?

15 A. That's a broader view of the same material  
16 that is depicted in photographs Exhibits 38  
17 and 39. The photographs again include the  
18 truck stops that are used to prevent the  
19 trucks from falling into the hole of the  
20 landfill when it's dumping waste. There  
21 are -- there's also a partial picture of three  
22 U.S. EPA personnel in the upper left-hand  
23 corner.

24 Q. That photograph would have been taken at  
25 approximately the same time as photos 38 and



1 39?

2 A. That's correct.

3 Q. Moving on to 41, what does that photograph  
4 represent?

5 A. That is a photograph of the eastern wall of  
6 the landfill, also a photo of the eastern side  
7 of -- of the landfill.

8 Q. Approximately what time would that photograph  
9 have been taken?

10 A. Approximately ten o'clock a.m. on the 6th of  
11 August, 1986.

12 Q. Did you observe the material which is  
13 represented in that photograph being dumped?

14 A. I believe some of that material in this  
15 photograph may have been dumped by the truck  
16 shown in Exhibits 15 and 16. There's a very  
17 large volume of waste material there, much  
18 more than could have been dumped by one truck.

19 Q. Do you know which of the material that is  
20 represented in that photograph would have been  
21 dumped by the truck?

22 A. It appears to be the material that is in a  
23 pile at the edge of the landfill.

24 Q. Is that the blackish looking material on the  
25 far left corner -- far left edge of the

1 photograph?

2 A. No.

3 Q. Is that the other pile of material that is  
4 somewhat in from the left edge of the  
5 photograph?

6 A. Yes, towards the center of the photograph.

7 Q. If we can move on to the next exhibit, Number  
8 42, can you tell me what that represents?

9 A. That is a photograph of a U.S. EPA personnel  
10 in protective clothing, including an air  
11 purifying respirator. It appears that this  
12 person is preparing a sample in a sample  
13 collection tray.

14 Q. Do you know approximately what time that  
15 photograph would have been taken?

16 A. Approximately sometime between 10 to 10:30  
17 a.m. on August 6, 1986.

18 Q. If you can refer to the exhibit that's been  
19 marked as Number 43, and if it will help you,  
20 please refer to the original from which that  
21 photocopy was taken, can you please tell me  
22 what that photograph represents?

23 A. That is a photograph of the landfill observed  
24 by American Steel Foundries, a -- it appears  
25 that an American Steel Foundries' truck is



1 dumping a waste material from the truck into  
2 the edge of the landfill. The material in the  
3 photograph appears to be very liquid-like.  
4 There's a remote sampling device extended out  
5 behind the truck.

6 Q. Remote "dampering" device?

7 A. "Sampling."

8 Q. Approximately what time would this photograph  
9 have been taken?

10 A. Approximately 4:10 -- I'm sorry, 1410 on  
11 August 7, 1986.

12 Q. Is the truck which is represented in that  
13 photograph the truck which was used to contain  
14 the electric arc furnace dust and sand/slurry?

15 A. In samples 11 through 14?

16 Q. Yes.

17 A. Yes, it is.

18 Q. If we can move on to the exhibit that's been  
19 marked as Number 44, and please refer to the  
20 original from which the photocopy was taken if  
21 it will help you. What does that photograph  
22 represent?

23 A. This photograph represents material being  
24 dumped from an American Steel Foundries' truck  
25 into the landfill in Sebring. The material

1 appears to be the liquid-like material that  
2 comes out at the beginning of the dump of the  
3 load.

4 Q. Approximately what time would that photograph  
5 have been taken?

6 A. Approximately 1400 hours on August 7, 1986.

7 Q. The truck in that photograph would be the same  
8 truck in the photograph which is photocopied  
9 in Exhibit Number 43; is that correct?

10 A. That's correct.

11 Q. Is the material from which sample S11 was  
12 taken represented in any of these photographs?

13 A. Not in the photographs in front of me. The  
14 material is represented in other photographs.

15 Q. Yesterday I believe you testified that there  
16 is a photograph in which you are pointing to a  
17 representative level of sand/slurry contained  
18 in the roll-off container, as you described  
19 it, I believe, which had been placed under the  
20 electric arc furnace baghouse at the Alliance  
21 foundry; is that correct?

22 A. That's correct.

23 Q. Is that photograph contained within these  
24 photographs?

25 A. It is not.

1 Q. Yesterday I believe you also testified that  
2 there was a photograph which was taken, which  
3 was of a level of the electric arc furnace  
4 dust and sand/slurry which was contained in  
5 the roll-off container at the Sebring landfill  
6 prior to the material being dumped; is that  
7 correct?

8 A. That's correct.

9 Q. Is that photograph contained in these photos?

10 A. There are photographs of the truck.

11 Q. Is that particular photograph which shows the  
12 level contained in these exhibits?

13 A. No, it is not.

14 Q. Yesterday I believe you testified as to the  
15 existence of a photograph which shows you  
16 holding the tube that was used to take the  
17 core of the load sample, with a sample label  
18 which could be used to get scales. Is that  
19 photograph present in these photos?

20 A. It is not.

21 MR. SCHILLAWSKI: I don't want to  
22 get into a battle as to whether or not photos  
23 have been produced, but as far as I know,  
24 these are all the photos that we have gotten.

25 MS. SUTULA: That's what I said,

1 if you don't, we'll find them.

2 Q. As far as you know, are the photos to which  
3 you refer to contained in your files?

4 A. Yes, they are.

5 Q. Would it be the ordinary course of business to  
6 retain those photos in your file?

7 A. Actually --

8 MS. SUTULA: Wait a minute.

9 - - - -

10 (Thereupon, a discussion was had  
11 off the record between Kathleen Ann Sutula and  
12 the Witness.)

13 - - - -

14 A. I would like to clarify my response. I  
15 believe that they may not be in the -- in my  
16 files today.

17 Q. Are they in U.S. EPA files?

18 A. Yes, they are.

19 Q. Is it the ordinary course of business for  
20 photographs to be retained in the U.S. EPA  
21 files?

22 A. It is the ordinary course of business.

23 MS. SUTULA: Off the record.

24 - - - -

25 (Thereupon, a discussion was had

1 off the record.)

2 - - - -

3 MS. SUTULA: We'll put on the  
4 record that we'll give you copies of all  
5 photographs, including those which you  
6 mention, but also any others we may have.

7 Q. The majority of the material that was taken as  
8 sample S11 was dry; is that correct?

9 A. I believe that is correct, that the material  
10 collected from the landfill was primarily dry.

11 Q. The majority of the material that was taken as  
12 sample S14 was dry; is that correct?

13 A. The majority of the material in the core that  
14 was collected from the top of the truck was  
15 dry, so the sample would have to be dry.

16 Q. The majority of the material in S14 was  
17 therefore dry, correct?

18 A. Because the entire core was dry, yes. The  
19 majority of the entire core.

20 Q. In the course of your duties through U.S. EPA,  
21 have you ever entered American Steel  
22 Foundries' property when ASF personnel were  
23 not present?

24 A. Yes.

25 Q. When was that?

1 A. On several occasions.

2 Q. Can you give the dates of those occasions?

3 A. Not all the dates offhand, no.

4 Q. Can you describe the circumstances under which  
5 you entered American Steel Foundries' property  
6 when American Steel Foundries personnel was  
7 not present?

8 A. I have never entered American Steel Foundries'  
9 production facility when other personnel were  
10 not present. I have entered the American  
11 Steel Foundries landfill in Sebring, Ohio when  
12 other -- when American Steel Foundries'  
13 personnel were not present. It is my  
14 understanding that American Steel Foundries  
15 does not typically have personnel at that  
16 facility.

17 Q. Did you open a gate or cross a gate to enter  
18 the property?

19 A. There was no fence at the facilities up until  
20 this past year.

21 Q. Was there a gate at the facility?

22 A. I believe there was a gate at the north and at  
23 an auxiliary entrance to the facility. I have  
24 seen that both locked and unlocked.

25 The majority of the landfill up until



1 this year was not -- was not fenced off or  
2 secured and there was open access to the  
3 landfill.

4 Q. Did you ever open the gate which you have  
5 described to enter the landfill?

6 A. I have with American Steel Foundries'  
7 personnel.

8 Q. Have you ever opened the gate which you  
9 described to enter the landfill when American  
10 Steel Foundries' personnel were not present?

11 A. I did not typically enter the landfill through  
12 that access.

13 Q. Did you ever open that gate when American  
14 Steel Foundries' personnel were not present to  
15 enter the landfill?

16 A. I do not recall doing so.

17 Q. Did any American Steel Foundries' personnel  
18 ever tell you that it was all right to enter  
19 the American Steel Foundries landfill when no  
20 ASF personnel were present?

21 MS. SUTULA: Objection.

22 A. As I previously stated, there were no  
23 personnel at the landfill.

24 Q. Did any representative of ASF ever tell you  
25 that it was all right for you to enter the

1 landfill when ASF personnel were not present?

2 MS. SUTULA: Objection.

3 You may answer yes or no.

4 A. I don't recall that they ever said it, no.

5 Q. Did any American Steel Foundry representative  
6 ever ask you not to enter American Steel  
7 Foundries' property when no ASF personnel were  
8 present?

9 MS. SUTULA: Objection.

10 A. I was asked not to enter the landfill when no  
11 other American Steel Foundries' personnel were  
12 present.

13 Q. What was your response to that request?

14 A. That in -- at what time? I have been asked  
15 more than once.

16 Q. Let's take the first time you were asked, what  
17 was your response?

18 A. I don't recall specifics. I can only tell you  
19 in general terms.

20 Q. In general terms, what was your response?

21 A. That as Ohio or U.S. EPA --

22 Q. Let's take Ohio EPA first.

23 A. That as an EPA person, I was acting as an  
24 agent of the government and had the right  
25 under Section 3007 of RCRA to enter a facility



1 at any reasonable time to do an inspection.

2 Q. You were later again asked to not enter  
3 American Steel Foundries' property when no ASF  
4 personnel were present?

5 A. And I gave a similar response, yes.

6 Q. How many times were you asked not to enter the  
7 property?

8 A. Either two or three times. *I was asked to*  
9 Q. *come to the production facility first.*  
Did you give the same response each time?

10 A. Yes. I additionally said that at any point  
11 when approached by U.S. -- by American Steel  
12 Foundries' personnel, I would always identify  
13 myself with the proper credentials.

14 Q. Did American Steel Foundries ever ask you to  
15 report your intent to enter the Sebring  
16 landfill before entering?

17 MS. SUTULA: Objection.

18 A. Again, there were rarely anyone at this  
19 facility to make such an announcement to.  
20 When there were American Steel Foundries'  
21 personnel there, I did announce my intentions.

22 Q. Did American Steel Foundries' personnel ever  
23 ask you to report first at the Alliance  
24 foundry before proceeding to the Sebring  
25 landfill?

1 MS. SUTULA: Objection.

2 A. That request had been voiced.

3 Q. How many times?

4 A. Approximately two to three times.

5 Q. What was your response to that request?

6 A. A similar response to the previous requests,  
7 that under Section 3007 of RCRA, there was  
8 authority to do an inspection unannounced.

9 Q. Did any American Steel Foundry representative  
10 ever inform you that you were trespassing when  
11 you entered American Steel Foundries' property  
12 without invitation?

13 MS. SUTULA: Objection.

14 A. I don't recall if it was counsel or if it was  
15 plant personnel, but yes.

16 Q. Did someone?

17 A. Yes.

18 Q. What was your response?

19 A. Similar to other responses, that as an agent  
20 of the government, U.S. EPA and Ohio EPA, I  
21 had authority to inspect the facility under  
22 Section 3007 of RCRA.

23 Q. Did your training as an Ohio EPA employee  
24 cover your authority to conduct inspections?

25 A. In both U.S. EPA and Ohio EPA training.

1 Q. Did your training indicate whether as an  
2 employee of Ohio EPA or U.S. EPA you are  
3 allowed to enter onto property when you have  
4 been asked not to?

5 A. It did cover that.

6 Q. What was your authority?

7 A. Under section three thousand --

8 MS. SUTULA: Object --

9 A. -- seven of RCRA, there is authority to  
10 inspect any facility at any reasonable time.  
11 The backside of -- the backside of an Ohio EPA  
12 employee's identification card cites authority  
13 for access.

14 Q. Did you provide a receipt for the samples  
15 which you took from the American Steel  
16 Foundries' facilities during the August 6th  
17 and 7, 1986 sampling inspection when you took  
18 those samples?

19 MS. SUTULA: Objection.

20 A. When U.S. EPA collected the samples?

21 Q. Yes.

22 A. I believe that no such receipt was requested  
23 by American Steel Foundries.

24 Q. In fact, you did not give a receipt for any of  
25 the samples to American Steel Foundries,

1 correct?

2 A. In fact no request was given.

3 Q. In fact no receipt was given; is that correct?

4 A. That is correct, no receipt, no request.

5 Q. Earlier in your deposition, you testified that  
6 you had had training at U.S. EPA and Ohio EPA  
7 in sampling methods for hazardous and solid  
8 wastes; is that correct?

9 A. I stated that training did include sampling,  
10 yes.

11 Q. You also testified that you used the U.S. EPA  
12 publication SW-846 in the course of that  
13 training.

14 A. I testified that that document is often  
15 referred to during training.

16 Q. Do you use SW-846 in teaching your training  
17 courses on sampling?

18 A. I never said I taught training courses in  
19 sampling.

20 Q. You indicated that you taught training courses  
21 for U.S. EPA; is that correct?

22 A. I am an instructor in U.S. EPA training  
23 courses.

24 Q. Do those training courses include sampling?

25 A. Training courses do include sampling.

1 Q. Do you use SW-846 as a reference or text in  
2 your instruction of those courses?

3 A. SW-846 is used -- is cited or referenced  
4 during the training of U.S. EPA and Ohio EPA  
5 personnel.

6 Q. Do you regard SW-846 as an authoritative  
7 source for methods of sampling solid and  
8 hazardous wastes?

9 MS. SUTULA: Objection. She's  
10 not an expert. She's not an expert in giving  
11 you her opinion. We didn't list her as an  
12 expert.

13 Q. You can answer the question.

14 MS. SUTULA: No, you can't answer  
15 the question.

16 Are you seeking to make her an  
17 expert witness here? We haven't tendered her  
18 as a witness expert.

19 MR. SCHILLAWSKI: Her opinion may  
20 be calculated to lead to admissible evidence.

21 MS. SUTULA: I doubt that, and  
22 opinion testimony is only good from expert  
23 witnesses and she's not an expert.

24 You're not going to answer that  
25 question.

1                   You asked this same line of  
2                   questions yesterday of this witness. If you  
3                   have new questions, go ahead, but she's not  
4                   going to answer expert type questions because  
5                   she's not an expert. When our expert's here,  
6                   you can ask all the expert questions. Save  
7                   them.

8       Q.       Have you read the sections of SW-846 related  
9               to the taking of samples of suspected  
10              hazardous wastes?

11      A.       I have.

12      Q.       Did the samples which you took on the August  
13               6th and 7, 1986 sampling inspection at  
14               American Steel Foundries conform with the  
15               protocols contained within those sections?

16                   MS. SUTULA:    Objection.

17                   You may answer.

18      A.       Again, I was not the only one that collected  
19               samples. Samples were collected by a total of  
20               four U.S. EPA personnel and sampling methods  
21               were utilized in the field that fall within  
22               the realm of SW-846.

23      Q.       Were the samples which you decided to take on  
24               August 7, 1986, taken in conformance with the  
25               protocols in SW-846?

1 MS. SUTULA: Objection.

2 A. First of all, the decision to take samples was  
3 not just my decision. It was U.S. EPA's  
4 decision.

5 Q. Did you have input into that decision?

6 A. To collect samples?

7 Q. Yes.

8 A. Yes.

9 Q. Are you aware of the procedures which were  
10 used to take those samples?

11 A. I was present during the sampling, yes.

12 Q. Did the procedures used to take those samples  
13 conform with SW-846 protocols?

14 A. As previously testified, the practices used  
15 during this sampling inspection fall within  
16 the realm of guidance -- guidance within  
17 SW-846, and other sampling guidances provided  
18 by U.S. EPA.

19 Q. Would the core of the load sample exhibit the  
20 average properties of the dust and sand/slurry  
21 mixture which was contained in the tank truck  
22 from which the core was taken in?

23 MS. SUTULA: Objection. I  
24 believe that's outside -- will you first  
25 define "properties," and then I will know if

1           it's outside this witness's area of  
2           knowledge.

3       Q.     Would the core sample which was taken as S14  
4           exhibit the average physical and chemical  
5           properties of the universe or whole of  
6           material that was contained in the tank truck  
7           from which the sample was taken?

8                       MS. SUTULA:     Objection.

9                       Do not answer that.

10                      That is beyond her area of  
11           expertise.   She's not a chemist, she's not  
12           testified that she sampled anything else on  
13           this truck whatsoever.   It's an improper  
14           question for this witness.

15       Q.     Would the sample which was taken as S14  
16           exhibit the same physical properties in terms  
17           of dryness or wetness as the average  
18           properties of the whole of the material  
19           contained in the tank truck from which sample  
20           S14 was taken?

21                      MS. SUTULA:     Objection.

22                      You may answer.

23       A.     The material that was -- sample taken from the  
24           core is representative of what material was  
25           collected in that core.



1           The material in the truck was not  
2           homogenized.

3   Q.    The majority of the material in the truck was  
4           wet, correct?

5   A.    From -- from my view on top of the truck, the  
6           majority of the material looked dry.

7   Q.    You observed the truck having been filled with  
8           the sand/slurry mixture prior to the addition  
9           of electric arc furnace dust, correct?

10  A.    That is correct.

11  Q.    That truck was filled to a certain level which  
12           you have earlier testified, I believe,  
13           somewhere between half and three-quarters; is  
14           that correct?

15  A.    I believe so, yes.

16  Q.    Electric arc furnace dust was then added to  
17           the truck?

18  A.    That is correct.

19  Q.    And the electric arc furnace dust would have  
20           been added dry, correct?

21  A.    That's what I observed.

22  Q.    The sand/slurry mixture was added wet?

23  A.    That by nature is wet, yes.

24  Q.    The majority of the material which was  
25           contained in the truck after the addition of

1 the electric arc furnace dust would have been  
2 wet, then, correct?

3 A. I believe your previous question had to do  
4 with what I could see. From what I could see  
5 from the top of the truck was that the  
6 material from that view was mostly dry.

7 Q. Based on your knowledge of what was placed  
8 into the truck and the various levels of  
9 material in the truck after the placement of  
10 the individual streams in the truck, the  
11 majority of the material in the truck would  
12 have been wet, correct?

13 MS. SUTULA: Objection.

14 A. As I testified yesterday, if the majority of  
15 the material was placed in the truck as  
16 liquid, the majority of the material at the  
17 landfill would also have had to be liquid.  
18 Some moisture had to be absorbed by the dust.

19 Q. In deciding to take sample S14 as a sample,  
20 you made a conscious decision to take a sample  
21 of dry material as opposed to wet material; is  
22 that correct?

23 MS. SUTULA: Objection.

24 A. That's incorrect.

25 Q. Sample S14 was dry, is that not correct?

1 A. I testified that the majority of the material  
2 in the core as extracted from the truck was  
3 dry, yes.

4 Q. You decided to take S14 as a sample knowing  
5 that it was -- excuse me -- the majority of it  
6 was dry, correct?

7 A. That is correct, I decided to use the entire  
8 core material as a sample, yes.

9 Q. You knew that the tank truck at that time had  
10 been loaded with sand/slurry which was wet and  
11 electric arc furnace dust which was dry at the  
12 time it was loaded, correct?

13 A. That's correct.

14 Q. Knowing that S14 was dry, you then made a  
15 conscious -- made the selection of that sample  
16 with a conscious knowledge that it reflected  
17 dry material rather than wet material; is that  
18 correct?

19 MS. SUTULA: Objection.

20 A. Yes, that that core represented the dry  
21 material observed from the top of the truck.

22 Q. When you decided to take sample S11 you knew  
23 that that sample would consist of dry  
24 material, is that not correct?

25 A. I previously testified that the decision in

1           collecting S11 was that the material that left  
2           the truck looked different than other  
3           materials that had previously been dumped from  
4           the truck.

5   Q.       Therefore, when you decided to take S11, you  
6           did so with a conscious knowledge that it  
7           presented a different appearance than the  
8           majority of the other materials which had left  
9           the truck, correct?

10  A.       That's what I previously testified, yes.

11  Q.       Are you familiar with the mechanism of random  
12           sampling?

13                       MS. SUTULA:    Objection.

14  A.       I am familiar with the term random sampling.

15  Q.       Would you please describe what that term  
16           means?

17  A.       At what level?

18  Q.       As applied to practical sampling taken in a  
19           field inspection.

20  A.       What it is or what the purpose is? I need  
21           clarification.  It's a very broad question.

22  Q.       What is the purpose of random sampling in  
23           practical applications of sampling?

24  A.       The purpose is to -- again, I need something  
25           more specific to -- can you give me a

1 particular instance or --

2 Q. You have indicated that you have read the  
3 provisions of SW-846 dealing with sample  
4 taking; is that correct?

5 A. Right.

6 Q. SW-846 relies upon random sampling to obtain  
7 representative samples; is that not correct?

8 MS. SUTULA: Objection. Are we  
9 having a pop quiz on SW-846? Give her the  
10 document, let her refresh herself.

11 Q. You earlier testified that between the time  
12 that the core of the load sample was -- core  
13 of the load was taken in the tube, and the  
14 time that it was decided to take that core as  
15 sample S14, that that tube was lying across a  
16 sampling pan; is that correct?

17 A. Yes.

18 Q. Is the sampling pan across which the tube was  
19 lying represented in any of these photographs?

20 A. As I previously testified, no, it is not.

21 Q. All right. I think we're done with the  
22 photos.

23 - - - -

24 (Thereupon, a recess was had.)

25 - - - -

1                   (Thereupon, a voluminous document  
2           captioned 'Test Methods For Evaluating Solid  
3           Waste, Physical/Chemical Methods, SW-846,  
4           Second Edition,' was marked for the purpose of  
5           identification as Defendant's Exhibit 45.)

6                   - - - -

7   Q.   Mrs. McCord, I'm handing you what has been  
8           marked as Defendant's Exhibit 45. Do you  
9           recognize this document?

10   A.   Yes.

11   Q.   What is it?

12   A.   It is a portion of a guidance manual issued by  
13           U.S. EPA called 'Test Methods For Evaluating  
14           Solid Waste, SW-846.'

15   Q.   Is this particular document the version of  
16           SW-846 for which you have read the sampling  
17           sections?

18   A.   I have read this version.

19   Q.   Are you familiar with the mechanism of random  
20           sampling which is described in the sampling  
21           sections of this edition of SW-846?

22   A.   I am.

23   Q.   Can you describe that mechanism?

24   A.   Do you want me to refer to what it says in  
25           this document?

1 Q. If you find that necessary to refresh your  
2 recollection, please do. Essentially my  
3 question is were the random sampling  
4 procedures and protocols contained in the  
5 sampling sections of SW-846 used in the  
6 sampling inspection that was conducted at the  
7 August 6th and 7, 1986 sampling inspection at  
8 American Steel Foundries?

9 A. At the landfill?

10 Q. Yes.

11 A. No.

12 Q. What other protocol was used?

13 A. Other than random sampling?

14 Q. Was random sampling used?

15 A. I just said no.

16 Q. What other protocol was used?

17 A. Grab samples.

18 Q. Was there any written protocol that you used  
19 to guide your taking of the grab samples on  
20 August 6th and 7th?

21 A. EPA standard field techniques.

22 Q. Are those included in any written document  
23 anywhere?

24 A. They are included in probably -- referenced in  
25 various types of documents.

1 Q. Would you please identify those documents that  
2 they are referenced in?

3 MS. SUTULA: Objection.

4 If you can, answer.

5 A. I can't do that, ~~no.~~ *without refreshing my*  
*memory.*

6 Q. Are you familiar with the SW-846 concept of a  
7 haphazard sample?

8 A. I am.

9 Q. Would you please describe what that concept  
10 is?

11 A. I need to reference the -- would you like me  
12 to read what it says in SW-846?

13 Q. If you have to refresh your recollection.

14 A. Can you indicate which page? This is not the  
15 entire document.

16 Q. I believe it would be on a page, or around a  
17 page marked "eight" slash "sampling" dash  
18 "development," about that far in,  
19 double-sided.

20 A. I can read what it says regarding haphazard  
21 selected samples.

22 Q. Is a haphazard sample a representative sample  
23 according to SW-846?

24 MS. SUTULA: Objection. The  
25 document will speak for itself.



1 A. Do you want me to read what SW-846 says  
2 regarding haphazard?

3 Q. Do you consider a haphazard sample to be a  
4 representative sample?

5 A. It is representative of the material that is  
6 sampled, yes.

7 Q. Is it representative of the entire universe or  
8 whole of a mass of material from which it is  
9 taken or is it representative only of the  
10 material which is contained within the sample?

11 A. Could you first design -- define what you mean  
12 by "haphazard"?

13 Q. I am using the SW-846 concept of a haphazardly  
14 selected sample.

15 MS. SUTULA: Before you answer,  
16 what's the question that's before the  
17 witness? Can you tell us what the question  
18 is?

19 - - - -

20 (Thereupon, the last question was  
21 read back by the Notary.)

22 - - - -

23 A. Yes.

24 Q. Is it representative of the average properties  
25 of the entire universe or whole of the mass of

1 material from which it is taken?

2 MS. SUTULA: Objection. Again,  
3 you're getting into the properties. This  
4 witness is not an expert as to what the  
5 properties of a whole are, and that's beyond  
6 her field of expertise. I'm going to instruct  
7 her not to answer that.

8 Q. Are you familiar with the statistical concept  
9 of sampling accuracies as described in SW-846?

10 A. I am.

11 Q. Was SW-846 procedures or any other protocol  
12 used by U.S. EPA to assure that sampling  
13 accuracy would be achieved in the sampling  
14 conducted on August 6th and 7th at American  
15 Steel Foundries?

16 MS. SUTULA: Objection. She has  
17 already testified that protocol SW-846 was not  
18 used at that sampling inspection. This is a  
19 duplicative question and the witness has  
20 already testified that this document was not  
21 used at that inspection.

22 Q. Was any other protocol used to assure that the  
23 samples taken during the August 6th and 7,  
24 1986 sampling at American Steel Foundries  
25 would exhibit the statistical sampling

1 accuracy?

2 MS. SUTULA: Objection.

3 A. I can't answer your question because of the  
4 way you phrased it. Could you --

5 Q. Did you take any steps prior to sampling at  
6 American Steel Foundries to assure that the  
7 samples that would be taken during the  
8 sampling would be statistically accurate?

9 MS. SUTULA: Objection.

10 A. Yes.

11 Q. What were those steps?

12 A. A sample was taken to represent -- so that the  
13 sample would represent the material that was  
14 sampled. It was collected in a fashion that  
15 would allow the analysis of that material to  
16 reflect what was sampled.

17 Q. In fact, you did not make any pre-planning of  
18 how the samples were to be taken; is that not  
19 correct?

20 A. That is not correct.

21 Q. What pre-planning did you make as to how the  
22 samples would be taken?

23 A. As previously testified to yesterday, I had  
24 conversations with Joe Fredle in preparation  
25 for sample collection.

1 Q. But those conversations did not include  
2 discussions as to how sampling accuracy would  
3 be assured, did they?

4 MS. SUTULA: Objection.

5 A. Yes, they did.

6 Q. What was the substance of the conversations  
7 relating to sampling accuracy?

8 A. In approach and kind of equipment, that type  
9 of thing. All those affect accuracy.

10 Q. Was there any document which reflects those  
11 discussions?

12 MS. SUTULA: Objection. You  
13 asked that yesterday. She told you no  
14 yesterday. You're getting repetitious.

15 Q. Are you familiar with the statistical concept  
16 of sampling precision?

17 MS. SUTULA: Objection.

18 A. Yes.

19 Q. Can sampling precision be evaluated when only  
20 one sample is taken of a material?

21 MS. SUTULA: Objection. Again  
22 you're getting into opinions. This witness is  
23 not our expert, I'm going to instruct you not  
24 to answer.

25 Q. Was any pre-sampling statistical analyses

1           conducted to determine what number of samples  
2           would be required to be taken of the  
3           dust/slurry mixture from American Steel  
4           Foundries as sent to the Sebring landfill to  
5           assure that the required precision in sampling  
6           results was obtained?

7       A.     No.

8       Q.     Was any post sampling statistical analysis  
9           conducted to determine whether a sufficient  
10          number of samples had been taken to assure the  
11          required degree of precision in the sampling  
12          results on the dust/slurry mixture from  
13          American Steel Foundries that was transported  
14          to the Sebring landfill?

15                   MS. SUTULA: Objection.

16       A.     No.

17       Q.     The tank truck container from which the core  
18           of the load sample was taken was constructed  
19           so that access to the contents was restricted;  
20           is that not correct?

21       A.     I'm sorry, I didn't get the whole question.  
22           What was restricted?

23       Q.     The tank truck container from which S14 core  
24           tube sample was taken, was constructed so that  
25           access to the contents of that container was

1 restricted, correct?

2 MS. SUTULA: Objection. This  
3 witness can't -- you're asking for why the  
4 tank truck was constructed in the fashion it  
5 was?

6 MR. SCHILLAWSKI: I'm asking for  
7 whether it was constructed in such a fashion  
8 that access to the contents was restricted.

9 A. I did not evaluate the tank's construction.

10 Q. Do you remember whether there were sufficient  
11 openings into the container that -- such that  
12 you had unrestricted access to the contents of  
13 that container?

14 MS. SUTULA: Objection.

15 You may answer.

16 A. Again, I did not evaluate the construction of  
17 the container.

18 Q. I'm not asking for your evaluation of the  
19 construction. I'm asking for your memory of  
20 whether your access to the contents of that  
21 container from the top of the container was  
22 constricted in any way?

23 A. I had access to the contents of the container.

24 Q. Did you have access to all of the contents of  
25 the container?

1 MS. SUTULA: Objection.

2 Do you understand the question?

3 THE WITNESS: Not really.

4 MS. SUTULA: Then say you don't  
5 understand.

6 Q. As a matter of fact, your access to the  
7 contents of the container was restricted to  
8 that area which was under the port in the top  
9 of the container through which you took the  
10 core of the load sample; is that not correct?

11 A. It is not correct.

12 Q. What other access did you have to the contents  
13 of the container?

14 A. Through the ports.

15 Q. How many ports were there?

16 A. Two.

17 Q. Did you take samples through both ports?

18 A. There are two ports on top of the tank truck,  
19 and one core was taken.

20 Q. So you did not take samples through both  
21 ports?

22 A. One core was taken through one port.

23 Q. Was the core that was taken through the one  
24 port essentially restricted to a sample of a  
25 single vertical plane of the material in the

1 truck?

2 A. One vertical plane, not necessary -- yes,  
3 that's true.

4 Q. Is the material in the tank homogeneous?

5 A. No.

6 Q. Was there any gridwork drawn of the contents  
7 of the tank to determine what elements of the  
8 material contained in the tank would be taken  
9 as samples?

10 MS. SUTULA: Objection. You have  
11 asked that same question now in a number of  
12 different ways. She's already said there was  
13 no pre-planning or -- of that and you're just  
14 asking now with an insertion of a new word.

15 If you want to answer it, go ahead  
16 and answer it, but --

17 Q. Was any gridwork drawn of the tank volume in  
18 order to determine what elements of the tank  
19 volume would be taken as samples?

20 A. Not to my knowledge.

21 Q. If you can refer back to Exhibit Number 13,  
22 please, if you can refer to the section on  
23 page one marked as "special requests." That  
24 section indicates that the samples that would  
25 be taken from American Steel Foundries on

*incomplete  
mixing*



1 August 6th and 7th would be analyzed for EP  
2 toxicity, fluoride, cyanide and phenol; is  
3 that not correct?

4 A. The document says that the "samples will be  
5 solids," parentheses, "EAF dust," end  
6 parentheses, "parameter will be EP tox,  
7 fluoride, cyanide, phenol."

8 Q. The samples that were taken were in fact  
9 analyzed for fluorides, cyanides, phenols, in  
10 addition to EP toxicity, were they not?

11 A. I believe so, yes.

12 Q. Cyanides, fluorides and phenols are not part  
13 of the practical hazardous waste program, are  
14 they?

15 A. Those compounds are hazardous substances, yes.

16 Q. Who made the determination that fluorides,  
17 cyanides and phenols would be analyzed for?

18 A. I requested it.

19 Q. For what reason did you request that cyanides,  
20 fluorides and phenols be analyzed?

21 MS. SUTULA: Objection.

22 A. Because the -- these contaminants are often  
23 found in foundry type wastes.

24 Q. In fact, cyanides, fluorides and phenols are  
25 contained in an Ohio EPA procedure for

1           evaluating foundry sand; is that not correct?

2                   MS. SUTULA:    Objection.

3    A.       No.

4    Q.       If you can refer back to Exhibit 2, there is  
5           an attachment to your letter which is Exhibit  
6           2, correct?

7    A.       There is an attachment to the January 17, 1985  
8           letter.

9    Q.       What is that attachment?

10   A.       It is an Ohio EPA inter-office communication.

11   Q.       Have you seen that communication at the time  
12           you wrote this letter?

13   A.       Yes, I did.

14   Q.       This inter-office communication deals with a  
15           policy for disposal of fly ash and foundry  
16           sand; is that not correct?

17   A.       Yes, it was the policy at that time.

18   Q.       This policy indicates that foundry sand  
19           leachate shall not contain phenolics, cyanides  
20           and fluorides at certain levels that are  
21           listed in the policy, does it not?

22                   MS. SUTULA:    The document speaks  
23           for itself.

24   A.       The document lists levels of contaminants and  
25           has the words "Additionally, foundry sand

1 leachate shall not contain certain levels of  
2 phenols, cyanides and fluorides."

3 Q. Therefore, phenols, cyanides and fluorides are  
4 a parameter which is used by Ohio EPA to  
5 evaluate foundry sands; is that not correct?

6 A. Not today, I don't believe, it's not correct.

7 Q. Was it at the time that you took the samples  
8 for the August 1986 sampling inspection?

9 A. That was a policy in place at the time of the  
10 January 17, 1985 letter.

11 Q. Was it in place during the 1986 sampling  
12 inspection?

13 A. Yes.

14 Q. In fact, the decision that you made to have  
15 the samples analyzed for cyanides, fluorides  
16 and phenols was based on their use by Ohio EPA  
17 in evaluating foundry sands, was it not?

18 A. Partially.

19 Q. Did you ever take any samples from the Sebring  
20 landfill when American Steel Foundries  
21 personnel were not present?

22 A. I or EPA collectively? Can you clarify your  
23 question?

24 Q. Did you personally?

25 A. Did I personally? I believe I was present,

*evidence  
of other  
const.  
in the  
mtl.* ↗

1           yes.

2       Q.     Did you personally ever take any samples from  
3           the Sebring landfill when American Steel  
4           Foundries' personnel were not present?

5       A.     No.

6       Q.     Did anyone from U.S. EPA, to your knowledge,  
7           ever take any samples from the Sebring  
8           landfill when American Steel Foundries'  
9           personnel were not present?

10      A.     Not to my knowledge.

11      Q.     In the event that the United States is  
12           required to expend money trying this case and  
13           loses, do you feel that that would in any way  
14           jeopardize your position with the agency?

15                   MS. SUTULA:    Objection.

16                   You may answer.

17      A.     No.

18      Q.     Is it your feeling that any promotions or  
19           demotions would be tied to the outcome of this  
20           case?

21      A.     No.

22      Q.     That's all the questions I have for today.  
23           We're going to reserve the right to continue  
24           this deposition once we have had the  
25           opportunity to review the file documents and

The State of Ohio,            )  
County of Cuyahoga.        )   SS:

CERTIFICATE

I, Joyce L. Polinsky, a Notary Public within and for the State aforesaid, duly commissioned and qualified, do hereby certify that the above-named CATHERINE A. McCORD was by me, before the giving of her deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth;

That the deposition as above set forth was reduced to writing by me by means of stenotypy, and was later transcribed upon a computer by me;

That the said deposition was taken in all respects pursuant to the stipulations of counsel herein contained; that the foregoing is the deposition given at said time and place by said CATHERINE A. McCORD;

That I am not a relative or attorney of either party or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I hereunto set my hand  
and seal of office, at Cleveland, Ohio this  
\_\_\_\_\_ day of December, A.D. 1989.

Joyce L. Polinsky, Notary Public  
528 Citizens Building  
Cleveland, Ohio 44114

My Commission expires September 28, 1991.

1           The State of Ohio,        )

2           County of Cuyahoga.    )   SS:

3                               CERTIFICATE

4           I, Joyce L. Polinsky, a Notary Public  
5           within and for the State aforesaid, duly  
6           commissioned and qualified, do hereby certify  
7           that the above-named CATHERINE A. McCORD was  
8           by me, before the giving of her deposition,  
9           first duly sworn to testify the truth, the  
10          whole truth, and nothing but the truth;

11          That the deposition as above set forth was  
12          reduced to writing by me by means of  
13          stenotypy, and was later transcribed upon a  
14          computer by me;

15          That the said deposition was taken in all  
16          respects pursuant to the stipulations of  
17          counsel herein contained; that the foregoing  
18          is the deposition given at said time and place  
19          by said CATHERINE A. McCORD;

20          That I am not a relative or attorney of  
21          either party or otherwise interested in the  
22          event of this action.

23          IN WITNESS WHEREOF, I hereunto set my hand  
24          and seal of office, at Cleveland, Ohio this  
25          \_\_\_\_\_ day of December, A.D. 1989.

\_\_\_\_\_  
Joyce L. Polinsky, Notary Public  
528 Citizens Building  
Cleveland, Ohio    44114

My Commission expires September 28, 1991.